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

In the Matter of the Accusation Against: **C. JULIAN OMIDI, M.D.** **aka Kambiz Beniamia Omidi** Physician & Surgeon Certificate No. A71181 Respondent.	Case No. 17-2004-162146 OAH No. L2006070409

DECISION AFTER REMAND FROM SUPERIOR COURT

This matter came on for noticed hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on July 9, 10, 11, 12 and 24, 2007, at Los Angeles, California. Edward K. Kim, Deputy Attorney General, and Paul C. Ament, Supervising Deputy Attorney General, represented Complainant David T. Thornton. Respondent C. Julian Omidi, M.D., was present and was represented by Henry R. Fenton and Robert L. Shapiro, Attorneys at Law.

Evidence was received, the matter was argued, and the matter was submitted for decision on July 24, 2007.

The Administrative Law Judge's Proposed Decision, submitted on September 4, 2007, was adopted by the Board and became effective on October 26, 2007.

Thereafter, Respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 07CS01401, which was heard and thereafter granted by the court on August 20, 2008. The Superior Court of the State of California, pursuant to its Judgment Granting Petition for Peremptory Writ of Mandamus dated August 20, 2008, remanding the proceedings to the Board, commanded this Board to set aside its decision in the above matter dated September 26, 2007, and to reconsider its action in light of the court's final ruling. The Board thereafter issued its Decision After Remand dated September 18, 2008, and again revoked Respondent's certificate. Respondent challenged the Board's compliance with the court's ruling. By Order dated February 4, 2009, the Superior Court ordered the Board to remove from its decision any reference to Respondent's Missouri license applications, to provide Respondent with an opportunity to submit oral or written argument regarding the appropriate penalty, and to allow additional evidence to the extent it considers issues not addressed at the original hearing.

In compliance with the court's order, the Board has stricken all references to Respondent's Missouri license applications. That information was not considered in reaching this decision.

In compliance with the court's order, both parties were permitted to file written argument with the Board regarding the issue of penalty. Both parties filed written argument and the Board has fully considered those written arguments in reaching its decision.

The Board did not consider any issues not addressed at the original hearing.

Having reconsidered the matter in light of the court's ruling, the Board hereby sets aside its decision in this matter and makes the following Decision on Remand in compliance with the court's order. A copy of the court's Order and Tentative Ruling and the Peremptory Writ are attached as Exhibit "A".

Rulings Affecting the Accusation and the Issues

During the hearing, Complainant filed a Second Amended Accusation (Exhibits 51 and 55) that contained new charges. Respondent objected to, and made a motion to strike, some of the new allegations on the grounds that the new charges therein were barred by the statute of limitations found in Business and Professions Code section 2230.5. After argument by both parties, and for the reasons more specifically set forth in the record, the objection was sustained and the following portions of the Second Amended Accusation were stricken:

a. Paragraph 19 (page 7, lines 15 – 22);

b. Paragraph 20 (page 7, line 23 to page 8, line 3);

c. Paragraph 22 (b) (page 8, lines 19 and 20);

d. Later references to prior paragraphs that are incorporated by reference (page 8, lines 21 and 22; page 9, lines 17 and 18; and page 9, lines 23 and 24).

FACTUAL FINDINGS

1. The Accusation, First Amended Accusation, and Second Amended Accusation were filed by Complainant in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On March 24, 2000, the Board issued Physician and Surgeon Certificate number A71181 to Respondent. The Certificate was in full force and effect from that time to the hearing in this matter, and was to expire on July 31, 2007, unless renewed. If not renewed, the Board maintains jurisdiction over the matter pursuant to Business and Professions Code section 118, subdivision (b).

3. At different times, Respondent has also been known as Combiz Omidi, Kambiz Omidi, Kambiz Beniamia Omidi, Combiz Julian Omidi, and Julian C. Omidi. He changed his name to Julian because he believed it would be easier for his patients and his practice.

4. In summary, the Second Amended Accusation alleges that Respondent's license is subject to discipline under various sections of the Business and Professions Code for the following acts: (a) Respondent attended the University of California, Irvine (UC-Irvine) but failed to include UC-Irvine when answering a question on his license application that requested information on all undergraduate schools he attended; (b) Respondent cheated on exams while at UC-Irvine; (c) Respondent was convicted of three related crimes in 1991; and (d) Respondent failed to disclose these convictions when answering questions on his license application that requested information on convictions.

5. Respondent was born in Iran in July 1968. When he was ten years old, he and his family moved to the United States, where he attended school from grade 5 and afterward. Respondent attended University High School in Irvine, and successfully completed several advanced placement courses. After graduating high school, Respondent entered UC-Irvine in 1986. He lived at home, about one mile from campus, with his mother, father, and younger brother. Respondent was extremely devoted to pursuing his education, and did not have any job or participate in any extracurricular activities while attending UC-Irvine. He did not date or develop many social relationships, and had few friends. He described his usual day as arriving at school about 7:30 a.m. and staying until 10:30 p.m., coming home, taking a nap, and studying until 3:00 a.m. Respondent stated that he liked this schedule. Respondent's goal, from an early age, was to attend medical school and become a physician. There are seven generations of doctors in Respondent's family.

6. Respondent began attending UC-Irvine in the fall quarter of 1986 and was dismissed from the university, with cause, effective May 5, 1990. He was a triple major, in economics, psychology, and biological sciences. His transcript reveals an unusual number of quarters in which he registered for many more courses than average. The average number of units per quarter is 16, and students rarely take more than 20 units for any extended period of time. In total, Respondent earned credit for 311 units at UC-Irvine, with a grade point average of 3.4. His transcript (Exhibit 18) is summarized as follows:

Quarter	Units taken/ Completed	Other information
Fall 1986	13/13	Deans Honor List (DHL)
Winter 1987	20/20	DHL
Spring 1987	19/8	Withdrew from 11 units
Fall 1987	27/27	DHL
Winter 1988	38/38	DHL
Spring 1988	43/43	DHL
Fall 1988	56/50	Failed 6 units
Winter 1989	58/26	Failed 9 units; incomplete for 23 units
Spring 1989	23/23	
Fall 1989	35/31	Incomplete for 4 units

7. The circumstances under which Respondent registered for and completed many of his classes were suspicious. Respondent was able to add or change courses without always getting all of the required approvals from teachers. Permission from a Dean was required to register for more than 20 units per quarter, and it was not clear that Respondent had obtained those approvals. The current registrar at UC-Irvine testified that, in her 27 years of experience, she had never seen numbers of units this high taken over this number of quarters. The registrar at UC-Irvine when Respondent attended was aware of Respondent because of the number of units for which he was registered beginning in the winter quarter of 1988 and thereafter. When she advised the senior academic counselors in Respondent's majors of this situation, she was instructed to prepare a report each quarter, which she dubbed "the Omidi report," of all students registered for 24.7 units or more. Other than Respondent, the few students listed in the report were usually involved in the performing arts, where individual instruction and performance groups often resulted in a high number of credits. There was no evidence of what occurred after Respondent's name appeared on the reports for various quarters.

8. Although the registrars believed the circumstances of the high number of Respondent's units, and the manner in which he registered for these units, may have been suspicious, it was not established, by clear and convincing evidence, that Respondent cheated in any courses while at UC-Irvine.

9. On February 2, 1990, Respondent was involved with other students in a burglary of exam papers from an office at UC-Irvine. It was not established, as alleged, that Respondent obtained, by illegal means, master keys to faculty offices in order to steal examinations. However, in a search of a car used by Respondent, a key was found for an office in the Chemistry Department at UC-Irvine. Respondent did not establish that he was authorized to have that key.

10. One of the other students involved in the burglary, Arash Benham, had been a friend of Respondent. Respondent had tutored Benham in the past. Benham told Respondent he was under extreme pressure from his family to perform well in school. Respondent believed that Benham was depressed and likely to harm or kill himself if he did not perform well in school. Respondent helped Benham study by using an exam Benham brought, telling Respondent it was an advanced copy of a test to be given. Respondent did not admit to any other complicity or knowledge of any burglary or any other crime.

11. Respondent, Benham and at least one other student, Amir Bagherzadeh, were caught and arrested in connection with the burglary. A short time later, Benham committed suicide.

12. In February and March 1990, Respondent spoke several times with UC-Irvine ombudsman Robert Wilson concerning the events leading to his arrest and the suicide of his friend. Complainant offered the testimony of Wilson given at the preliminary hearing of the criminal charges brought against Respondent and Bagherzadeh, which occurred in December 1990.[1] Wilson testified that, on March 20, 1990, Respondent admitted that he used stolen exams for three courses that he marked on a copy of his transcript, and that he was a lookout for the

[1] Respondent's objection to the use of this transcript was overruled, for reasons specifically set forth in the record.

burglary of an exam on February 2, 1990. Wilson asked Respondent to prepare a written statement. The statement written by Respondent did not include these admissions. Neither the marked copy of the transcript nor Respondent's written statement was offered in evidence at the present hearing.

13. Respondent denied that he cheated or used stolen exams, or that he highlighted anything on his transcript for Wilson. He also denied he told Wilson that he was a lookout for the burglary of any exam.

14. The preliminary hearing testimony of Wilson also includes Respondent's statement to Wilson that Respondent was not involved in the burglary. The lack of both the marked transcript and the written statement is troubling, and, combined with the contrary statements that Wilson attributes to Respondent and Respondent's denials at hearing, makes it difficult to give substantial weight to Wilson's testimony. Wilson testified that he brought in another administrator, Michael Butler, as a witness to Respondent's statements, but Butler did not testify. Under the entire circumstances, while the preponderance of the evidence might have substantiated the allegation, it was not established, by clear and convincing evidence, that Respondent cheated on any exams while he was at UC-Irvine.

15. On December 28, 1990, a felony Information was filed against Respondent (*People v. Amir Bagherzadeh and Kambiz Beniamia Omidi*, Orange County Superior Court, case number C-83006). Respondent was charged with violating: Penal Code section 182, subdivision (1), conspiracy to commit a crime, a felony, for conspiring to commit burglary in violation of Penal Code section 459; Penal Code sections 459/460.2/461.2, general burglary, a felony; and Penal Code section 496.1, to willfully and unlawfully buy, receive, conceal, sell and withhold property, and to aid in buying, receiving, concealing, selling and withholding property, to wit: a key, a felony.

16. (A) On December 3, 1991, pursuant to a plea negotiation, Respondent withdrew his not guilty pleas and pleaded guilty to the three counts of the Information. On the motion of the prosecutor, the three counts were reduced to misdemeanors under Penal Code section 17, subdivision (b). The Court's Minute Order stated that the hearing was for "motions/change of plea/sentencing," and included that a factual basis for the plea was found and the guilty pleas were accepted. It was ordered that Respondent perform 200 hours of community service with CalTrans, and that, at the end of six months, Respondent could withdraw his guilty plea and a plea of nolo contendere was to be entered. A hearing on the balance of Respondent's sentence was set for June 26, 1992.

(B) A written waiver of constitutional rights was prepared as part of Respondent's plea negotiation. (Exhibit 54.) On page one, Respondent indicated that he intended to plead guilty to the three counts against him. In item 2, the form states: "I understand I have violated this section by (factual basis)." Respondent's attorney filled in the following: "In O.C. [Orange County], between Sept. 1989 & Feb. 1990 I conspired & agreed to commit 2° [second degree] burglary & on 02/2/90 did commit that offense in violation of P.C. § 459/460.2 / also on 02/10/90, I possessed stolen property, knowing it to be stolen. Stipulated factual basis exists." Respondent initialed this section, indicating that he understood it and agreed with it. Respondent signed the waiver form on December 3, 1991.

(C) In item 11 of the waiver form, Respondent acknowledged that he understood and agreed that the proposed sentence was that imposition of sentence would be suspended and he would be placed on three years informal probation, with a handwritten asterisk (*) inserted on the waiver form. Probation would include payment of $100 restitution and 200 hours of community service. There is a handwritten asterisk at the bottom of the page next to the following handwritten statement:[2] "No judgment imposed for six months: if . [defendant] completes community service, judgment ([UNINTELLIGIBLE] re probation) to be imposed + P.C. 1203.4 relief granted on same date."

(D) Respondent had made it known to his attorneys at the time that he planned on becoming a licensed physician and that he wanted a disposition of the criminal case that would not prevent this from happening. Respondent mentioned this to his attorney Frank Ospino, who handled the preliminary hearing. Respondent then hired attorney Ronald MacGregor, who had more trial experience, when it appeared his case would go to trial. On the day the plea was negotiated, Michael Garey was Respondent's attorney of record. Respondent received advice from his attorneys that the case could be resolved in a way that the charges would be eventually dismissed.

17. In an informal conference on December 3, 1991, the Superior Court judge indicated that he would impose this indicated sentence. E. Thomas Dunn, the Deputy District Attorney who prosecuted the criminal case, wrote on the waiver form that his office was not in agreement with the proposed sentence. Dunn testified that, at that time in Orange County courts, it was not unusual for this type of plea to be arranged in misdemeanor cases in Municipal Court concerning petty offenses or drug diversion. However, for the type of charges against Respondent, Dunn characterized the arrangement as highly unusual.

18. On June 26, 1992, at the hearing on the balance of Respondent's sentence, he was again represented by Garey. The Court entered an order that: Respondent had pled guilty to the three counts as felonies; the offenses were reduced to misdemeanors under Penal Code section 17, subdivision (b); imposition of sentence was suspended and Respondent was placed on probation for three years on terms including that he perform 200 hours of community service, with a note that the community service had been completed; and that the minute order constituted "the (amended) probation order." There was no indication that any relief under Penal Code section 1203.4 was considered or granted at that time, as was contemplated in the waiver form. (See Finding 16 (C)).

19. Following Respondent's arrest after the events in February 1990, he was discharged for cause from UC-Irvine, with the condition that he could apply for re-entry only with the specific approval of the Chancellor. There was no evidence that Respondent contested the discharge. Respondent considered himself as having been expelled from UC-Irvine.

20. Respondent did not use any of the 311 quarter credits he received at UC-Irvine to qualify for medical school. Instead, he began over, attending numerous community colleges and other colleges, including Golden West College, Coastline College, and California State University, Los Angeles.

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[2] Although the handwriting and copy are not completely legible, testimony of a witness familiar with both the defense attorney who wrote it and his writing has assisted the Court in determining the content.

21. Respondent entered medical school at St. Louis University in Missouri in August 1992, and graduated with a distinction in research in May 1996. He performed his internship in internal medicine at Loma Linda University Medical Center from July 1996 to June 1997. He had returned to southern California because of problems that arose in his father's business and a desire to be closer to his family and assist during that time.

22. While doing his internship, Respondent considered obtaining a physician's license in California and reviewed the application. In 1997, he sought legal advice concerning the questions on the application relating to his time at UC-Irvine and his convictions. He first sought advice from Garey, his criminal defense attorney. Garey informed him that the criminal charges had not been dismissed, and then prepared a petition for relief under Penal Code section 1203.4 that was signed by Respondent on February 5, 1997.

23. (A) This Petition and Order are significant in several respects. In it, Respondent declares, under penalty of perjury, that he is the defendant "who was convicted of the misdemeanor offense of violation of" various Penal Code sections "on or about 7/23/92."[3] The Petition reflects that Respondent fulfilled the terms of his probation and that he had been discharged from probation pursuant to Penal Code section 1203.3. These two representations are contradictory, and there is no other evidence that Respondent had been discharged from probation pursuant to Penal Code section 1203.3. The Petition requests that he be permitted to withdraw his plea of guilty.

(B) The Petition then states: "The granting of this order does not relieve the defendant of the obligation to disclose this conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency."

(C) The Order granting the petition was signed on April 8, 1997, and filed on April 9, 1997. Pursuant to the Order, the plea of guilty was set aside and vacated, a plea of not guilty was entered, and the complaint was dismissed.

24. Respondent was unhappy that Garey had not obtained an order of dismissal in 1992, and he sought further legal advice. Respondent was referred to attorney Robert Croissant in 1997. Croissant advised Respondent that his conviction need not be reported on the license application, and that Respondent did not need to reveal his undergraduate attendance at UC-Irvine on the license application. (See Exhibits 20 and H.)

25. Croissant advised Respondent that the dismissal processed by Garey "was also still not complete." (See Respondent's declaration in Exhibit C.) Croissant prepared an Amended Petition under Penal Code section 1203.4, signed by Respondent under penalty of perjury on May 20, 1997. The Amended Petition was on the same form, and contained the same recitals, as that noted in Findings 22 and 23 above, with the change that, instead of requesting that Respondent be permitted to withdraw a plea of guilty, it requested to withdraw a plea of "nolo contendre [sic]." The Order granting the petition was signed on May 23, 1997, and it was filed

[3] There is no record in evidence of any court action taken on this date.

on August 18, 1997. (Exhibit 25, p. 13.) Croissant sent a copy of this Order to Respondent, and returned other papers to him, by letter dated October 27, 1997. (Exhibit R.)

26. For reasons not explained in the record, Croissant prepared another Amended Petition under Penal Code section 1203.4, also signed by Respondent under penalty of perjury on May 20, 1997. The Petition was the same as noted in Finding 25, except that the request to withdraw the plea of "nolo contendre [sic]" was written slightly differently, and there is handwriting at the top stating "Duplicate Original." The Order granting the petition was signed and filed on July 10, 1997. (Exhibit 25, p. 14.)

27. In 1997, Penal Code section 1203.4 included the following provision: "The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, [or] for licensure by any state or local agency . . . ." This language has not changed to the present.

28. There was no direct evidence of the specific language contained in the Medical Board application for licensure that Respondent had obtained and had asked Croissant to review. However, from the totality of the evidence, it is inferred that the questions on undergraduate schools attended and convictions are similar, if not identical, to questions 11 and 22 in the application Respondent eventually submitted in 2000. (Exhibit 4.) Question 22 asks whether the applicant was ever convicted of or pled nolo contendere to any violation of law. It adds the following instruction: "YOU ARE REQUIRED TO LIST ANY CONVICTION THAT HAS BEEN SET ASIDE AND DISMISSED OR EXPUNGED, OR WHERE A STAY OF EXECUTION HAS BEEN ISSUED." (Emphasis in original.)[4]

29. Pursuant to Business and Professions Code sections 480 and 490, licensing boards can deny an application for a license or suspend or revoke an existing license based on a qualifying conviction "irrespective of a subsequent order under section 1203.4 of the Penal Code."

30. When the plea negotiation was entered into on December 3, 1991, the advice received by Respondent from Garey, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect. The waiver form clearly indicated that Garey intended to return to court six months later to request relief for Respondent under Penal Code section 1203.4. Equally clearly, that code section and the standard form for the petition and order for such relief advise a defendant that he is not relieved of the obligation to disclose the conviction in response to any direct question contained in any application for licensure by a state agency. Advice given in December 1991 that Respondent would not need to reveal the conviction was incorrect for at least two reasons: first, the anticipated sentence did not allow for relief under Penal Code section 1203.4 for another six months; and second, even with such relief, the conviction must be disclosed on an application for licensure to the Board, a state agency, a requirement under both the Penal Code and the Business

[4] Although the words "expunge" and "expungement" are nowhere contained in Penal Code section 1203.4, the process for relief under that section is commonly, if incorrectly, referred to as an expungement of the conviction. (*People v. Frawley* (2000) 82 Cal.App.4th 784, 791-2.)

and Professions Code. When Garey repeated the advice to Respondent when the first Petition for relief was filed in 1997, that advice was still legally incorrect.

31. The advice received by Respondent from Croissant later in 1997, when the two later petitions for relief were submitted and the orders issued, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect for the same reasons as set forth in Findings 27, 28, 29 and 30. Further, Croissant had reviewed the application and should have been familiar with the specific instruction to reveal convictions even after they were set aside and dismissed, or expunged.

32. After completing his internship in 1997, Respondent was accepted into a highly competitive residency in dermatology at St. Louis University. This residency lasted from July 1997 to June 2000. Respondent received a license to practice medicine in the state of Missouri in July 1997. Respondent's performance in the residency program was "exceptional," according to the associate dean of the medical school, Dr. Neal Pennys, who was also the chairman of the Dermatology Department. Respondent had the highest scores on yearly academic exams, and received honors in his third year of residency, based largely on observations of his patient interactions and practices.

33. On January 11, 2000, the Board received Respondent's application for physician and surgeon's licensure. The application included Respondent's declaration, under oath, that the information contained therein was true and correct. Question 11A of the application required Respondent to list "the names and addresses of all colleges or universities where pre-professional, postsecondary instruction was received." (Emphasis in original.) The question also required applicants to "submit official transcripts . . . for each school attended." Respondent did not list, or submit a transcript from, UC-Irvine.

34. Respondent explained that, in his view, he had been expelled from UC-Irvine and did not receive any valid credits for the classes he had completed. Respondent relied upon the advice he received from Croissant to the effect that his attendance at UC-Irvine did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing that he had attended UC-Irvine.

35. Croissant recalled reviewing the application and a letter from UC-Irvine dated April 2, 1990, concerning Respondent's suspension from UC-Irvine. This letter is not in evidence, however it is mentioned in Croissant's letter dated December 28, 2006. (Exhibit R.) Croissant relied upon Respondent's incorrect belief that he had not received valid, completed credits from UC-Irvine. Croissant did not review transcripts or seek any information from UC-Irvine before rendering his advice to Respondent. Croissant believed the question on the application required Respondent to list only schools where he had successfully completed credits.

36. Croissant's understanding of the nature of Respondent's credits earned at UC-Irvine, based almost exclusively on information provided by Respondent, was incorrect. Croissant's and Respondent's interpretation of the question on the application was also incorrect. The plain language of the question asks for a list of universities attended. As Respondent attended UC-Irvine, he should have listed it in his reply. Under all of the circumstances, Respondent's reliance on Croissant's advice on this subject was not reasonable.

37. The application also asked for information about convictions. See Finding 28 for the specific language of the question. Respondent answered "no" to that question.

38. Respondent explained that he had told Garey, his attorney, that he would agree only to an outcome in the criminal case that would result in no record, and had been told the plea negotiation would do so. Respondent also relied upon the advice he received from Croissant to the effect that his criminal case had been dismissed and did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing his convictions in 1991.

39. The Board issued Respondent's license on March 24, 2000. According to Cindy Oseto, an Associate Analyst for the Board who has reviewed numerous applications and made recommendations as to whether they should be approved, denied, or investigated further, if an application contained information that an applicant had been convicted of a theft crime, further investigation would be pursued. The Board often considers disclosure of a conviction as an element of rehabilitation and may consider issuing a probationary license. However, according to Oseto, the failure to disclose a theft crime raises issues of honesty and integrity, and she would recommend either denial of that application or perhaps a conditional license. Further, she would recommend denial of an application where the applicant had not disclosed attendance at a college from which he had been dismissed for cause due to cheating or for helping another student cheat.

40. From July 2000 to January 2001, Respondent practiced with the Facey Medical Group in Mission Hills, California. Respondent opened a solo practice in February 2001 in Beverly Hills. Although there was little testimony from Respondent about the nature of his practice, this description is from an interview he had with a Board investigator on April 26, 2005. (Exhibit 22.) At that time, Respondent had six office locations: Bakersfield, Lancaster, Apple Valley, Beverly Hills, West Hills and Valencia. Bakersfield is a solo practice. In the other offices he shared space with other physicians. He employed another physician who worked at the West Hills and Lancaster locations, and two nurse practitioners and two physician assistants who
rotated among some of his offices. Respondent worked at each office one day per week, except Beverly Hills, one-half day every two weeks. He had privileges at Antelope Valley and Northridge Hospitals. Respondent's practice consisted of general dermatology, as well as skin cancer treatment and cosmetic dermatology. Respondent saw about 30 – 40 patients per day. Respondent testified that he goes out of his way to communicate with his patients, and often gives patients his business card containing his personal cell phone number, and answers patients' calls at night and on weekends.

41. A colleague, Dr. Fariborz Satey, is a pediatrician and the medical director of Heritage Health Care group in the Antelope Valley. Dr. Satey has referred patients to Respondent for six or seven years, and gets feedback from those patients that they received excellent care from Respondent. Dr. Satey receives no compensation for these referrals. When he mentioned to Respondent that it would be helpful to have a dermatologist in the Lancaster area for the convenience of patients, Respondent opened his office in Lancaster.

42. Other incidents established by the evidence are not alleged in the Second Amended Accusation but, nevertheless, provide useful information in the nature of circumstances that are aggravating, mitigating, bear on Respondent's credibility and rehabilitation, or otherwise augment the record.

43. On February 18, 1993, Respondent signed an Application for Naturalization from the Immigration and Naturalization Service (INS). In reliance on the prior advice he had received from attorneys Garey and MacGregor, confirmed by another consultation with MacGregor, Respondent answered "no" to a question that asked whether he had ever been arrested, charged, indicted or convicted for breaking or violating any law. The application was received on March 16, 1995, and Respondent was interviewed by an INS "adjudicator" on March 24, 1995. During the interview, Respondent answered "no" to questions of whether he had any arrests, expungements or convictions. Respondent was granted citizenship in 1995.

44. On March 4, 2005, an Indictment was filed against Respondent in the United States District Court for the Central District of California alleging that Respondent unlawfully procured citizenship by falsely representing on his application that he had never had an arrest, conviction or expungement. Respondent hired attorney Robert Shapiro to represent him. After Respondent and Shapiro's associate met with the Assistant U.S. Attorney and provided documents and other information concerning the convictions and the legal advice that Respondent had received, the government moved to dismiss all charges. The motion was granted by Order dated April 29, 2005.

45. (A) Respondent submitted several applications for licensure to the Department of Motor Vehicles (DMV), some of which contain possible inconsistencies. Respondent testified that he received his driver's license while he was in high school, which would have been in 1986 or before.

(B) In evidence are documents indicating that Respondent was issued a driver's license, number C5120518, on August 3, 1993, under the name Combiz Omidi. It was not established whether this was inconsistent with his statement of earlier licensure, or a license renewal.

(C) On January 23, 1997, Respondent signed, under penalty of perjury, an application for a driver's license. The application indicates it is for an original license, not a renewal or name change. The application is in the name of Julian C. Omidi. It indicates that the applicant has a license in Missouri, although Respondent testified that this part of the application is not in his handwriting. Respondent answered "no" to a question asking whether he applied under a different name within the last seven years. This application was assigned DMV number B7990414. Respondent testified that he called the DMV and cancelled this application. There was no evidence that any driver's license was issued based on this application.

(D) Respondent's current driver's license, number C5120518, was issued on May 14, 2004, in the name of Combiz Omidi, and will expire in 2008.

46. (A) In about September 2006, Respondent consulted with attorney C. David Haigh. Haigh was very familiar with Garey, as they had both been deputy public defenders together and had practiced together in the past. On Respondent's behalf, Haigh filed a motion for the criminal case to be dismissed under Penal Code section 1385, and for the dismissal to be made nunc pro tunc as of June 26, 1992. The motion was supported by a declaration of Respondent (Exhibit C, pages 6 – 8), in which he explained some of the events and the legal advice he had received.

(B) The motion was granted on November 30, 2006, by Orange County Superior Court Judge Ronald Owen, the same judge who presided over the proceedings against Respondent on December 3, 1991, and June 26, 1992. An Order was filed that same date whereby Respondent withdrew his plea of guilty/nolo contendere, the matter was dismissed pursuant to penal Code section 1385, and the order was to be effective nunc pro tunc as of June 26, 1992.

47. Complainant contended that the dismissal order under Penal Code section 1385 entered in November 2006 is void, for several technical, procedural and substantive reasons. This Administrative Court does not have the authority or jurisdiction to reach such a conclusion. (*DeRasmo v. Smith* (1971) 15 Cal.App.3d 601.) The Superior Court ruled in this case that, since the convictions were dismissed under Penal Code § 1385, nunc pro tunc, effective June 26, 1992, "this order is effective and it means that it can no longer be said that petitioner was convicted of the crimes referred to above." The Superior Court also concluded that the Board improperly considered the convictions as a factor for purposes of determining penalty. The Board has left intact all of the Administrative Law Judge's factual findings regarding the criminal conviction (except former Finding 49, which is contradicted by the Superior Court's ruling) solely for purposes of historical context – that is, to accurately reflect what occurred during the hearing. However, the Board has complied with the court's order and has disregarded those findings in reaching its decision after remand and in determining the appropriate penalty in this matter.

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal; "so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted – but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability." (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (Id., at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

The testimony of "one credible witness may constitute substantial evidence" including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

"[T]he weight to be given to the opinion of an expert depends on the reasons he assigns to support that opinion." (Citation); its value "'rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion. . . ,'" (Citation.) Such an opinion is no better than the reasons given for it (Citation), and if it is "not based upon facts otherwise proved, or assumes facts contrary to the only proof, it cannot rise to the dignity of substantial evidence. (Citations.)" (*White v. State of California* (1971) 21 Cal.App.3d 738, 759-760.)

"[T]he rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. 'Disbelief does not create affirmative evidence to the contrary of that which is discarded. 'The fact that the jury may disbelieve the testimony of a witness who testifies to the negative of an issue, does not of itself furnish any evidence in support of the affirmative of that issue and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative'.'" (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632, citing *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

3. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code[5] section 2235, authorizing disciplinary action where a license is obtained by fraud or misrepresentation, for Respondent's misrepresentation in his license application regarding educational institutions he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

4. (A) Respondent's intent is irrelevant to the determination that Respondent obtained his license by misrepresentations in his application. The danger is in falsely certifying facts which are not true, as opposed to any intent to do evil. This is "regardless of the intent of the doctor signing the certificate." (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 556.)

(B) The duty to make a full disclosure in an application for a professional license is an absolute duty. Justification for a failure to perform that duty is not found in the excuse that the applicant was advised by some person, no matter how high in official position that person might stand, that disclosure is not necessary. Whether a failure to disclose is caused by

[5] All further statutory references are to the Business and Professions Code, except where indicated.

intentional concealment, reckless disregard for the truth or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks integrity and/or intellectual discernment required of a professional. (See, *In re Gehring* (1943) 22 Cal.2d 708.)

(C) Respondent's reliance upon legal advice concerning disclosure of his attendance at UC-Irvine was not reasonable. The language of the application was clear and unequivocal. He was required to list all colleges attended and to attach transcripts. Respondent's belief that he did not have valid credits from UC-Irvine is an unsupported conclusion and without reason, and it does not appear in the evidence that Respondent or Croissant did anything to verify this unreasonable conclusion. Respondent's claim that he did not intend to deceive the Board by not disclosing his attendance at UC-Irvine is not credible and is rejected. It is determined that Respondent intended such deceit and, therefore, perpetrated a fraud on the Board.

(D Complainant established that Respondent's misrepresentations and fraud were material, in that his license application may have been treated differently had he made full disclosure. (See, *DeRasmo v. Smith, supra*, 15 Cal.App.3d 601.)

5. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, subdivision (e), for dishonesty for Respondent's misrepresentations regarding educational institutions that he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

6. (A) Neither party submitted any statutes, case law or argument to assist the court in determining to what extent, if any, Respondent's intent bears upon determining whether he committed "dishonesty" in failing to disclose his attendance at UC-Irvine. Dishonesty is a basis on which public employees may be discharged under Government Code section 19572, subdivision (f), and cases interpreting and applying that section are a useful reference.

(B) As set forth in *Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-19: "'Dishonesty' connotes a disposition to deceive. (Citation.) It 'denotes an absence of integrity; a disposition to cheat, deceive or defraud; . . .' (*Hogg v. Real Estate Comr.*, 54 Cal.App.2d 712, 717 [129 P.2d 709].)" Although the element of intent is discussed in the case of *Cvrcek v. State Personnel Bd.* (1967) 247 Cal.App.2d 827, it is in the nature of confirming that the trial court has discretion in making the determination of whether dishonesty has occurred, and the trial court is empowered to evaluate the evidence of lack of intent.

(C) The definitions of "dishonest" and "dishonesty" (Webster's Seventh New Collegiate Dict. (1969) p. 239), include references to willfulness, intent and fraud such that it may be reasonably concluded that there can be no dishonesty where there is no intent to deceive. As noted above, it is determined that Respondent intended to deceive the Board by failing to disclose his attendance at UC-Irvine. Such deceit constitutes dishonesty.

7. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, for unprofessional conduct, and section 2261, which defines unprofessional conduct as including "knowingly" signing a document which falsely represents the existence or nonexistence of a

state of facts, in this case, the misrepresentations regarding the educational institutions that he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

8. As noted above, Respondent's failure to disclose his attendance at UC-Irvine was intentional and fraudulent. Intent is not required for discipline to be imposed under this code section. As stated in *Brown v. State Department of Health, supra*, 86 Cal.App.3d at 555-556:

"[W]e hold that 'knowingly' to make or sign a certificate which 'falsely represents' a state of facts, a person need only have knowledge of the falsity of the facts certified when making or signing the certificate. Our interpretation is not only in accord with statutory and decisional definitions, but will best protect the public. Factual certifications by medical doctors are used extensively throughout society for many and varied purposes. A false medical certification, regardless of the doctor's intent, may be put to great mischief. The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true. . . .

"Nor do we find appellant's argument to be persuasive that the use of the words 'falsely represents' requires a finding of intent to deceive. In the absence of express language, intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. (Citation.) The revocation or suspension of a license is not penal, the Legislature has provided for suspension to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity. (Citations.) The potential of harm from the existence of a false medical certificate, regardless of the intent of the doctor signing the certificate, requires that doctors refrain from signing false certificates."

9. Cause exists to suspend or revoke Respondent's license pursuant to sections 480, subdivision (a) and 2234, subdivision (f), for actions or conduct that would have warranted denial of his application for licensure for Respondent's misrepresentations regarding educational institutions he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

10. Cause does not exist to suspend or revoke Respondent's license pursuant to section 2236, for conviction of a crime substantially related to the qualifications, functions or duties of a licensee, pursuant to the determination of the Superior Court. See Factual Finding No. 50.

11. The Board publishes guidelines for the use of Administrative Law Judges in determining the appropriate range of outcomes for statutory violations, referred to in California Code of Regulations, title 16, section 1361, and entitled "Manual of Disciplinary Orders and Disciplinary Guidelines" (9th Edition, 2003). These Guidelines acknowledge that they are not binding standards and that mitigating or other appropriate circumstances may establish a basis to vary from them.

For the violations of sections 2234 and 2261 found herein, the Guidelines recommend a maximum penalty of license revocation, and minimum penalties of stayed revocation and five or

seven years probation on various terms including suspension, coursework, evaluation, monitoring and therapy.

12. On the one hand, Respondent presented convincing evidence that some of the acts that constitute violations of law resulted from his reasonable reliance on legal advice. That the advice was incorrect was not known to Respondent.

13. On the other hand, Respondent intentionally deceived the Board in failing to disclose his attendance at UC-Irvine, most likely in an attempt to prevent the Board from learning that he had been discharged for cause and the reasons therefore. The entirety of the record reveals that Respondent has a penchant for dishonesty, to bend his position and shade his statements to suit his needs, without consistent regard for the truth. The Superior Court found that Respondent's "failure to disclose his attendance at UCI was knowing and intentional" and that Respondent "knew the answer he gave was false." As a physician, Respondent is continually placed in positions where honesty is critical, including for example physician-patient interactions, billing, third-party payors, etc. Honesty is a core requirement for physicians. Respondent has shown neither recognition of the importance honesty plays in the qualifications to be a physician, nor any remorse for his misrepresentation and lack of honesty to the Board. Respondent is not entitled to any benefit of the doubt – there is no doubt. His misrepresentation and dishonesty, occurring as they did in the process of obtaining his license, go to the core of his ability to practice his profession.

Under all of the circumstances herein, the health, safety and welfare of the people of the State of California can be protected only by a disciplinary order that revokes Respondent's license. Respondent's argument to the contrary was not persuasive.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Having reconsidered its decision in light of both the Peremptory Writ and the court's Order dated February 4, 2009, the Board revokes Physician and Surgeon Certificate number A71181 issued to Respondent C. Julian Omidi, M.D., pursuant to Legal Conclusions 1 through 9, and 13, separately and for all of them, effective back to October 26, 2007, the effective date of its first decision which was not stayed by the court.

This decision shall become effective at 5:00 p.m. on **June 19, 2009**.

IT IS SO ORDERED this **20th** day of **May**, 2009.

BARBARA YAROSLAVSKY
Chairperson, Panel B
Medical Board of California

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

C. JULIAN OMIDI, M.D., Petitioner, v. MEDICAL BOARD OF CALIFORNIA, Respondent.	CASE NO. 07CS01401 **ORDER** Hearing Date: December 19, 2008 Time: 9:00 a.m. Dept.: 31 Hon. Judge Michael Kenny

Petitioner C. Julian Omidi's Motion to Set Aside the Medical Board's Decision Following Remand, to Enforce Compliance with the Writ of Mandamus, to Require a Rehearing at which Petitioner is Present and Allowed to Present Argument and Evidence, and Objection to the Return to Peremptory Writ of Mandate Attaching the Decision came before this Court on December 19, 2008, in Department 31, the Honorable Michael Kenny presiding. Gene Livingston and Ray A. Sardo appeared as attorneys for Petitioner. Deputy Attorney General Edward K. Kim appeared as attorney on behalf of the Respondent Medical Board of California.

The Court having received and considered the evidence, and having heard the parties' oral arguments, hereby affirms the tentative ruling it issued on December 19, 2008, with the following addition:

Petitioner suggests that in light of the Court's ruling in the "Due Process and APA" issue, that the Court need not opine with regard to the "Conviction Related Findings". The Court disagrees. The issue of the "Conviction Related Findings" was specifically raised by petitioner. The opportunity for argument on remand under *Ventimiglia* is not an opportunity to reargue the entire case, but only the issue of penalty."

A true and correct copy of the Court's December 19, 2008, tentative ruling is attached as Exhibit A.

IT IS SO ORDERED, DECREED, AND ADJUDGED

Dated: 2/4/09

HONORABLE MICHAEL KENNY
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM

EDWARD KIM
DEPUTY ATTORNEY GENERAL

SAC 441,359,988v1 1-12-09

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA.
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

Date: 12/19/2008 Time: 09:00:00 AM Dept: 31

Judicial Officer Presiding: Judge Michael Kenny
Clerk: Susan Lee

Bailiff/Court Attendant: Greenwood, Derek
ERM: None
Reporter: V. Haley #10771

Case Init. Date: 11/09/2007

Case No: 07CS01401 Case Title: C JULIAN OMIDI. M.D. VS MEDICAL BOARD OF CALIFORNIA

Case Category: Civil - Unlimited

Event Type: Motion - Other - Writ of Mandate

Causal Document & Date Filed:

Appearances:

Gene Livingston and Ray A. Sardo are present for C. Julian Omidi, M.D., Petitioner.
Edward K. Kim, Deputy Attorney General is present for the Medical Board of California, Respondent.

NATURE OF PROCEEDINGS: Petitioner's Motion to Set Aside Medical Board Decision Following Remand

TENTATIVE RULING

The following shall constitute the Court's tentative ruling on the Motion to Set Aside Medical Board Decision Following Remand filed by Petitioner C. Julian Omidi, M.D., set for hearing in Department 31 on Friday, December 19, 2008 at 9:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

The Court grants Dr. Omidi's request for judicial notice of page 506 of Webster's II New Riverside Dictionary (Office ed. 1996), defining "penchant."

The Court grants the Board's requests for judicial notice of: (1) page 1432 of Random House Webster's Unabridged Dictionary (2d ed.), defining "penchant"; (2) page 623 of Webster's Seventh New Collegiate Dictionary, defining "penchant"; and (3) page 513 of the American Heritage Dictionary (3d ed.), defining "penchant."

Background. Dr. Omidi attended the University of California at Irvine ("UCI") as an undergraduate from 1986 to 1990. In 1990, he was discharged from UCI for cause in connection with another student's use of an exam that had been stolen from a faculty office. Dr. Omidi was arrested and charged with various crimes stemming from the theft of the exam. The criminal case took a long and procedurally-complex journey, which included, at one point, a conviction on misdemeanor counts resulting from a plea deal,

and which eventually ended in 2006, when Dr. Omidi obtained an order dismissing the charges, to be effective nunc pro tunc as of June 1992. At the administrative hearing, Dr. Omidi admitted only to helping the other student fill out the stolen exam and maintained he did not participate in the burglary.

Dr. Omidi completed his education at other institutions and obtained a license to practice medicine in California in 2000. In his license application, he did not disclose his attendance at UCI and stated that he had not been convicted of any violation of law.

The Board initiated the current disciplinary proceedings against Dr. Omidi in connection with those nondisclosures. In its initial decision, the Board found cause to revoke or suspend Dr. Omidi's license pursuant to the following:

(1) Business and Professions Code § 2235 (license obtained by fraud or misrepresentation), based on the Board's conclusions that Dr. Omidi misrepresented that he had not been convicted and committed fraud by failing to disclose his attendance at UCI.
(2) Business and Professions Code § 2234 (dishonesty), based on the Board's conclusions that Dr. Omidi committed fraud by failing to disclose his attendance at UCI and made certain misrepresentations on his application for a medical license in Missouri.
(3) Business and Professions Code §§ 2234 and 2261 (unprofessional conduct of knowingly signing a false document), based on the Board's conclusions that Dr. Omidi misrepresented that he had not been convicted, committed fraud by failing to disclose his attendance at UCI, and made certain misrepresentations on his application for a medical license in Missouri.
(4) Business and Professions Code §§ 480(a) and 2234(f) (conduct warranting denial of license application originally), based on the Board's conclusions that Dr. Omidi misrepresented that he had not been convicted, committed fraud by failing to disclose his attendance at UCI, and made certain misrepresentations on his application for a medical license in Missouri.
(5) Business and Professions Code § 2236 (conviction), based on the Board's conclusion that Dr. Omidi had been convicted of a crime stemming from the burglary.

The Board revoked Dr. Omidi's license based on the foregoing conclusions.

Dr. Omidi sought relief in this Court via petition for writ of mandate. The Court, Judge Ohanesian presiding, granted the petition after concluding that the weight of the evidence did not support the Board's conclusion that Dr. Omidi had been convicted of a crime. The Court further found that the Board improperly considered evidence relating to Dr. Omidi's Missouri license application, because it had not provided notice to Dr. Omidi that such evidence would be used in the administrative proceeding. The Court rejected Dr. Omidi's other contentions as meritless, specifically concluding that the weight of the evidence did support the Board's conclusion that Dr. Omidi fraudulently failed to disclose his attendance at UCI. The Court remanded the matter to the Board "for further proceedings consistent with this ruling." The Board was directed not to consider the conviction on charges that were later dismissed or the evidence concerning Dr. Omidi's Missouri license application in determining the penalty.

Dr. Omidi now challenges the Board's compliance with the writ on remand, pursuant to CCP § 1097. Dr. Omidi argues that the Board failed to comply with the writ by: (1) improperly relying on factual findings relating to the conviction in its decision on remand (the "remand decision"); (2) improperly relying on factual findings relating to Dr. Omidi's applications for licensure in Missouri in its remand decision; (3) improperly concluding that Dr. Omidi has a penchant for dishonesty; and (4) failing to reconsider the revocation of Dr. Omidi's license in good faith following issuance of the writ. Dr. Omidi further argues that the Board violated his due process rights and the California Administrative Procedure Act ("APA") by not providing him with a hearing on remand.

Conviction-Related Factual Findings. Dr. Omidi objects to the Board's inclusion of factual findings in its remand decision stating that he was "involved in the burglary" (¶¶ 9-10), "caught and arrested in connection with the burglary" (¶ 11), and detailing the criminal proceedings (not specifically indicated by petitioner, but presumably ¶¶ 15-18, 22-31, 38, 43-44). According to Dr. Omidi, the inclusion of these factual findings shows that the Board considered his conviction on remand in contravention of the writ ruling issued by Judge Ohanesian. The Court disagrees.

The factual findings contained in the paragraphs 9-11, 15-18, 22-31 and 38 essentially find that Dr. Omidi was involved in, arrested for, and criminally prosecuted in connection with the theft of the exam.

Paragraphs 43 and 44 discuss Dr. Omidi's U.S. citizenship application and an indictment filed against him alleging that he failed to disclose the conviction on that application, which was dismissed in 2005. Those paragraphs do not conclude that Dr. Omidi was convicted of any of the charged crimes, but rather deal with the events leading to his arrest, the procedural journey of the criminal case, and the allegation[1] in the immigration case that Dr. Omidi had been convicted of a crime and had not disclosed the conviction. Whether those findings were supported by the weight of the evidence was a question to be raised in the original writ petition and the Court will not consider whether such findings were proper in this CCP § 1097 motion. (The sole paragraph finding that Dr. Omidi suffered a criminal conviction in the original Board decision was deleted on remand and replaced by ¶ 50, which quotes Judge Ohanesian's ruling that "it can no longer be said that petitioner was convicted".)

Moreover, many of the factual findings regarding the burglary underlie the Board's legal conclusions with respect to Dr. Omidi's nondisclosure of his attendance at UCI. The fact that Dr. Omidi was discharged for cause from that institution for his involvement in the stolen exam events provides a possible motive for not disclosing his UCI attendance – the desire to prevent the Board from learning of those events. In addition, the procedural history of Dr. Omidi's criminal case is essential to understanding why Judge Ohanesian concluded that Dr. Omidi did not have a conviction and the resulting factual and legal conclusions by the Board, which reiterate that ruling and find no cause for discipline based on the conviction.

Because the challenged paragraphs do not contain a finding that Dr. Omidi suffered a criminal conviction and because Judge Ohanesian's ruling did not direct the Board to disregard the burglary-related events themselves or the procedural history of the case but only the finding that Dr. Omidi had been convicted, the Court concludes that the Board did not act improperly on remand by retaining the findings contained in paragraphs 9-11, 15-18, 22-31, 38, and 43-44.

Missouri License Application Findings. Dr. Omidi objects to the Board's inclusion of factual findings in its remand decision regarding his applications for a medical license in Missouri. (Remand Decision ¶¶ 46-48.) The Court agrees that these factual findings have no place in the remand decision following Judge Ohanesian's ruling that the Board improperly considered evidence of those applications in the administrative proceeding without providing notice to Dr. Omidi. While the Board asserts that the findings are included for "historical context," the findings do not support any legitimate factual findings or legal conclusions as they are based on evidence that should not have been considered in the first place. Accordingly, the Board is directed on remand to delete those paragraphs from its decision and not to consider those findings or the evidence on which they were based in determining Dr. Omidi's penalty.

Penchant for Dishonesty. Dr. Omidi argues that, when the factual findings regarding the burglary and related criminal proceedings, the Missouri applications, and the citizenship application are excluded, the only remaining evidence of his dishonesty is his non-disclosure of his attendance at UCI and some possible inconsistencies in his driver's license applications (discussed in ¶ 45 of the remand decision). Those instances of dishonesty do not amount to a "penchant," according to Dr. Omidi, so the Board erred by concluding that "the entirety of the record reveals that [Dr. Omidi] has a penchant for dishonesty." (Remand Decision, Legal Conclusions ¶ 13.) However, the Court has concluded that the Board did not act improperly in retaining the factual findings regarding the exam theft, the related criminal proceedings, and the dismissed immigration case, as discussed above. The definitions of "penchant" judicially noticed by the Court define that term as indicating a "strong inclination" or a "strong and continuous leaning." The Court cannot say that the Board has incorrectly applied that term based on the weight of the evidence presented in the case. (The Board's conclusion regarding Dr. Omidi's honesty is problematic under due process and the APA, however, for the reasons discussed below.)

Bad Faith. Dr. Omidi contends that the Board's reconsideration of his case on remand was not done in good faith. Such bad faith is shown, says Dr. Omidi, by the Board's refusal to delete factual findings regarding the burglary, criminal case, and Missouri license applications, and its imposition of the same penalty on remand. As discussed above, the Board did not act improperly by retaining the factual findings regarding the burglary and criminal case. While the Court concludes that the Board should have omitted mention of the Missouri license applications from the remand decision, the Court is not convinced that the inclusion of those findings demonstrates that the Board did not intend to comply with the writ, particularly given its representation that it disregarded those findings in determining the penalty on remand. (Remand Decision, ¶ 48.) Nor does the Board's decision to reimpose license revocation on remand indicate bad faith. Judge Ohanesian concluded that discipline was proper pursuant to four of the

five charged grounds because the weight of the evidence supported the Board's conclusion that Dr. Omidi committed fraud by failing to disclose his attendance at UCI on his license application. The Court is not willing to assume that imposition of a penalty that is not reversible as an abuse of discretion indicates bad faith by the Board absent other evidence of bad faith. (See Landau v. Med. Bd. (1998) 81 Cal.App.4th 191, 217-18 [where reasonable minds may differ as to propriety of penalty, no abuse of discretion has been shown].)

Due Process and the APA. Lastly, Dr. Omidi argues that the Board violated his due process rights and the APA by not holding a hearing following remand giving him the opportunity to "be present with counsel, and to present oral or written argument and/or evidence." Dr. Omidi has presented the Court with no authority holding that, on remand for redetermination of penalty following issuance of a writ of mandate, an agency must hold a full evidentiary hearing (or any other type of hearing) to comply with due process. Instead, Dr. Omidi has analogized his situation to that of a criminal defendant whose case is remanded for resentencing and that of a civil litigant on remand for a redetermination of damages. (See People v. Rodriguez (1998) 17 Cal.4th 253, 255; Cunninham v. Simpson (1969) 1 Cal.3d 301, 310.) The foregoing authorities are inapposite, however – Rodriguez was based on the defendant's right to be present with counsel at critical stages in the proceedings under the Sixth Amendment rather than procedural due process principles, and Cunningham was similarly decided on non-procedural due process grounds (the Court merely determined that it could not decide the appropriate remittitur amount and that a new trial would be the "safest and most complete" means of doing so).

While the law is less than clear on this point, the Court has located one case suggesting that due process may require notice and an opportunity to present argument on a remand for redetermination of penalty, at least where the penalty implicates the petitioner's ability to practice his or her profession. (Cole v. L.A. Community College Dist. (1977) 68 Cal.App.3d 785, 793.) In that case, a discharged public employee obtained a writ of mandate finding that some of the bases of his discharge were not supported by the evidence and remanding to the agency for redetermination of the penalty. (Id. at 789-90.) On remand, the agency referred the matter of penalty to the hearing officer who had conducted the original hearing for a recommendation without providing notice to the discharged employee. (Id. at 793.) The agency then provided the employee with brief notice of the meeting at which it voted to reimpose its original discharge penalty. (Id.) The Court of Appeals upheld the trial court's conclusion that such procedure did not violate due process, because the employee had been provided with the opportunity to provide both written and oral argument and because the matter was decided on the record, obviating any need for additional evidence. (Id.)

With regard to the APA, the law has recently been clarified in Ventimiglia v. Board of Behavioral Sciences (2008) 168 Cal.App.4th 296. In that license revocation case, the Court of Appeals held that Government Code § 11517(c)(2)(E)(ii) applies on a remand for redetermination of penalty where the agency on remand makes changes to its decision beyond "clarifying change[s] or change[s] of a similar nature that do[] not affect the factual or legal basis of the proposed decision." (Id. at 306-07.) Consequently, where the agency on remand goes beyond such clarifying changes, it must provide the petitioner with the opportunity for written or oral argument pursuant to § 11517(c)(2)(E)(ii). (Id.)

Here, the Court concludes that, as in Ventimiglia, the Board has made additional factual findings to support its reimposition of revocation on remand that go beyond clarifying changes and affect the factual basis of the decision. In its original decision, the Board based its conclusion that Dr. Omidi has a "penchant for dishonesty" on the Missouri license applications and the fact that he "was willing to acknowledge the factual bases for his plea negotiation in 1991 but, at this hearing, denied any complicity in illegal acts." In its remand decision, the Board changed its factual bases for concluding that Dr. Omidi has a "penchant for dishonesty" to his knowing and intentional nondisclosure of his attendance at UCI, his lack of "recognition of the importance honesty plays in the qualifications to be a physician," and his lack of "remorse for his misrepresentation and lack of honesty to the Board." (Remand Decision, Legal Conclusions, ¶ 15.)

Accordingly, pursuant to Ventimiglia and Cole, the Court concludes that the Board erred by not allowing Dr. Omidi an opportunity for argument on remand. To the extent that its decision is based on issues not addressed at the original hearing (Dr. Omidi contends that he had no opportunity to express remorse), the Board must also allow additional evidence to be presented on those issues. If, instead, the decision is based entirely on the record, the Board need not receive additional evidence.

Disposition. The motion is granted. The matter is remanded to the Board. On remand, the Board is directed to comply with Judge Ohanesian's ruling on the writ petition, to remove from its decision any reference to Dr. Omidi's Missouri license applications, to provide Dr. Omidi with an opportunity to submit oral or written argument regarding the appropriate penalty, and to allow additional evidence to the extent it considers issues not addressed at the original hearing. On or before March 1, 2009, the Board shall file with this Court a return indicating the steps it has taken to comply with this ruling.

Dr. Omidi is directed to prepare a formal order, incorporating the Court's ruling herein verbatim or attaching it as an Exhibit and thereafter submit it to the Court for signature in accordance with Rule of Court 3.1312.

1] The Board noted that the government dismissed the immigration case after Dr. Omidi provided background information regarding the criminal case and the legal advice he had received. Paragraphs 43 and 44 thus do not state or imply that Dr. Omidi had a conviction but only that the government initially alleged that he did.

COURT RULING

The matter is argued and submitted. The Court takes the matter under submission.

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

C. JULIAN OMIDI, M.D., Petitioner, v. MEDICAL BOARD OF CALIFORNIA, Respondent.	CASE NO. 07CS01401 **PEREMPTORY WRIT OF MANDAMUS** Hearing Date: July 25, 2008 Time: 1:30 p.m. Dept.: 11 Hon. Judge Gail D. Ohanesian

The People of the State of California

To the Medical Board of California, Respondent:

WHEREAS ON AUG 20 2008 judgment having been entered in this action, ordering that a peremptory writ of mandamus be issued from this court,

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ to vacate and set aside your decision of September 26, 2007, in the administrative proceedings entitled In the Matter of the Accusation Against C. Julian Omidi, which proceedings are hereby remanded to you, to reconsider your action in the light of this court's final ruling, and to take any further action specifically enjoined on you by law; nothing in this writ shall limit or control the discretion legally vested in you.

YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before sixty (60) days from the issuance of this writ, setting forth what you have done to comply.

Dated: AUG 20 2008

[Seal]

Dennis Jones
Clerk
By C. Beebout
Deputy Clerk

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

In the Matter of the Accusation Against: C. JULIAN OMIDI, M.D. aka Kambiz Beniamia Omidi Physician's & Surgeon's Certificate No. A71181 Respondent.	Case No. 17-2004-162146 OAH No. L2006070409

DECISION AFTER REMAND FROM SUPERIOR COURT

This matter came on for noticed hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on July 9, 10, 11, 12 and 24, 2007, at Los Angeles, California. Edward K. Kim, Deputy Attorney General, and Paul C. Ament, Supervising Deputy Attorney General, represented Complainant David T. Thornton. Respondent C. Julian Omidi, M.D. was present and was represented by Henry R. Fenton and Robert L. Shapiro, Attorneys at Law.

Evidence was received, the matter was argued, and the matter was submitted for decision on July 24, 2007.

The Administrative Law Judge's Proposed Decision, submitted on September 4, 2007, was adopted by the Board and became effective on October 26, 2007.

Thereafter, Respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 07CS01401, which was heard and thereafter granted by the court on August 20, 2008. The Superior Court of the State of California, pursuant to its Judgment Granting Petition for Peremptory Writ of Mandamus dated August 20, 2008, remanding the proceedings to the Board, commanded this Board to set aside its decision in the above matter dated September 26, 2007, and to reconsider its action in light of the court's final ruling.

Having reconsidered the matter in light of the court's ruling, the Board hereby sets aside its decision in this matter and makes the following Decision on Remand in compliance with the Peremptory Writ. A copy of the Peremptory Writ and Tentative Ruling is attached as Exhibit "A".

Rulings Affecting the Accusation and the Issues

During the hearing, Complainant filed a Second Amended Accusation (Exhibits 51 and 55) that contained new charges. Respondent objected to, and made a motion to strike, some of the new allegations on the grounds that the new charges therein were barred by the statute of limitations found in Business and Professions Code section 2230.5. After argument by both parties, and for the reasons more specifically set forth in the record, the objection was sustained and the following portions of the Second Amended Accusation were stricken:

a. Paragraph 19 (page 7, lines 15 – 22);

b. Paragraph 20 (page 7, line 23 to page 8, line 3);

c. Paragraph 22 (b) (page 8, lines 19 and 20);

d. Later references to prior paragraphs that are incorporated by reference (page 8, lines 21 and 22; page 9, lines 17 and 18; and page 9, lines 23 and 24).

FACTUAL FINDINGS

1. The Accusation, First Amended Accusation and Second Amended Accusation were filed by Complainant in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On March 24, 2000, the Board issued Physician and Surgeon Certificate number A71181 to Respondent. The Certificate was in full force and effect from that time to the hearing in this matter, and was to expire on July 31, 2007, unless renewed. If not renewed, the Board maintains jurisdiction over the matter pursuant to Business and Professions Code section 118, subdivision (b).

3. At different times, Respondent has also been known as Combiz Omidi, Kambiz Omidi, Kambiz Beniamia Omidi, Combiz Julian Omidi and Julian C. Omidi. He changed his name to Julian because he believed it would be easier for his patients and his practice.

4. In summary, the Second Amended Accusation alleges that Respondent's license is subject to discipline under various sections of the Business and Professions Code for the following acts: (a) Respondent attended the University of California, Irvine (UC-Irvine) but failed to include UC-Irvine when answering a question on his license application that requested information on all undergraduate schools he attended; (b) Respondent cheated on exams while at UC-Irvine; (c) Respondent was convicted of three related crimes in 1991; and (d) Respondent failed to disclose these convictions when answering questions on his license application that requested information on convictions.

5. Respondent was born in Iran in July 1968. When he was ten years old, he and his family moved to the United States, where he attended school from grade 5 and afterward. Respondent attended University High School in Irvine, and successfully completed several advanced placement courses. After graduating high school, Respondent entered UC-Irvine in 1986. He lived at home, about one mile from campus, with his mother, father and younger brother. Respondent was extremely devoted to pursuing his education, and did not have any job or participate in any extracurricular activities while attending UC-Irvine. He did not date or develop many social relationships, and had few friends. He described his usual day as arriving at school about 7:30 a.m. and staying until 10:30 p.m., coming home, taking a nap, and studying until 3:00 a.m. Respondent stated that he liked this schedule. Respondent's goal, from an early age, was to attend medical school and become a physician. There are seven generations of doctors in Respondent's family.

6. Respondent began attending UC-Irvine in the fall quarter of 1986 and was dismissed from the university, with cause, effective May 5, 1990. He was a triple major, in economics, psychology and biological sciences. His transcript reveals an unusual number of quarters in which he registered for many more courses than average. The average number of units per quarter is 16, and students rarely take more than 20 units for any extended period of time. In total, Respondent earned credit for 311 units at UC-Irvine, with a grade point average of 3.4. His transcript (Exhibit 18) is summarized as follows:

Quarter	Units taken/ Completed	Other information
Fall 1986	13/13	Deans Honor List (DHL)
Winter 1987	20/20	DHL
Spring 1987	19/8	Withdrew from 11 units
Fall 1987	27/27	DHL
Winter 1988	38/38	DHL
Spring 1988	43/43	DHL
Fall 1988	56/50	Failed 6 units
Winter 1989	58/26	Failed 9 units; incomplete for 23 units
Spring 1989	23/23	
Fall 1989	35/31	Incomplete for 4 units

7. The circumstances under which Respondent registered for and completed many of his classes were suspicious. Respondent was able to add or change courses without always getting all of the required approvals from teachers. Permission from a Dean was required to register for more than 20 units per quarter, and it was not clear that Respondent had obtained those approvals. The current registrar at UC-Irvine testified that, in her 27 years of experience, she had never seen numbers of units this high taken over this number of quarters. The registrar at UC-Irvine when Respondent attended was aware of Respondent because of the number of units for which he was registered beginning in the winter quarter of 1988 and thereafter. When she advised the senior academic counselors in Respondent's majors of this situation, she was instructed to prepare a report each quarter, which she dubbed "the Omidi report," of all students

registered for 24.7 units or more. Other than Respondent, the few students listed in the report were usually involved in the performing arts, where individual instruction and performance groups often resulted in a high number of credits. There was no evidence of what occurred after Respondent's name appeared on the reports for various quarters.

8. Although the registrars believed the circumstances of the high number of Respondent's units, and the manner in which he registered for these units, may have been suspicious, it was not established, by clear and convincing evidence, that Respondent cheated in any courses while at UC-Irvine.

9. On February 2, 1990, Respondent was involved with other students in a burglary of exam papers from an office at UC-Irvine. It was not established, as alleged, that Respondent obtained, by illegal means, master keys to faculty offices in order to steal examinations. However, in a search of a car used by Respondent, a key was found for an office in the Chemistry Department at UC-Irvine. Respondent did not establish that he was authorized to have that key.

10. One of the other students involved in the burglary, Arash Benham, had been a friend of Respondent. Respondent had tutored Benham in the past. Benham told Respondent he was under extreme pressure from his family to perform well in school. Respondent believed that Benham was depressed and likely to harm or kill himself if he did not perform well in school. Respondent helped Benham study by using an exam Benham brought, telling Respondent it was an advanced copy of a test to be given. Respondent did not admit to any other complicity or knowledge of any burglary or any other crime.

11. Respondent, Benham and at least one other student, Amir Bagherzadeh, were caught and arrested in connection with the burglary. A short time later, Benham committed suicide.

12. In February and March 1990, Respondent spoke several times with UC-Irvine ombudsman Robert Wilson concerning the events leading to his arrest and the suicide of his friend. Complainant offered the testimony of Wilson given at the preliminary hearing of the criminal charges brought against Respondent and Bagherzadeh, which occurred in December 1990.[1] Wilson testified that, on March 20, 1990, Respondent admitted that he used stolen exams for three courses that he marked on a copy of his transcript, and that he was a lookout for the burglary of an exam on February 2, 1990. Wilson asked Respondent to prepare a written statement. The statement written by Respondent did not include these admissions. Neither the marked copy of the transcript nor Respondent's written statement was offered in evidence at the present hearing.

13. Respondent denied that he cheated or used stolen exams, or that he highlighted anything on his transcript for Wilson. He also denied he told Wilson that he was a lookout for the burglary of any exam.

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[1] Respondent's objection to the use of this transcript was overruled, for reasons specifically set forth in the record.

14. The preliminary hearing testimony of Wilson also includes Respondent's statement to Wilson that Respondent was not involved in the burglary. The lack of both the marked transcript and the written statement is troubling, and, combined with the contrary statements that Wilson attributes to Respondent and Respondent's denials at hearing, makes it difficult to give substantial weight to Wilson's testimony. Wilson testified that he brought in another administrator, Michael Butler, as a witness to Respondent's statements, but Butler did not testify. Under the entire circumstances, while the preponderance of the evidence might have substantiated the allegation, it was not established, by clear and convincing evidence, that Respondent cheated on any exams while he was at UC-Irvine.

15. On December 28, 1990, a felony Information was filed against Respondent (*People v. Amir Bagherzadeh and Kambiz Beniamia Omidi*, Orange County Superior Court, case number C-83006). Respondent was charged with violating: Penal Code section 182, subdivision (1), conspiracy to commit a crime, a felony, for conspiring to commit burglary in violation of Penal Code section 459; Penal Code sections 459/460.2/461.2, general burglary, a felony; and Penal Code section 496.1, to willfully and unlawfully buy, receive, conceal, sell and withhold property, and to aid in buying, receiving, concealing, selling and withholding property, to wit: a key, a felony.

16. (A) On December 3, 1991, pursuant to a plea negotiation, Respondent withdrew his not guilty pleas and pleaded guilty to the three counts of the Information. On the motion of the prosecutor, the three counts were reduced to misdemeanors under Penal Code section 17, subdivision (b). The Court's Minute Order stated that the hearing was for "motions/change of plea/sentencing," and included that a factual basis for the plea was found and the guilty pleas were accepted. It was ordered that Respondent perform 200 hours of community service with CalTrans, and that, at the end of six months, Respondent could withdraw his guilty plea and a plea of nolo contendere was to be entered. A hearing on the balance of Respondent's sentence was set for June 26, 1992.

(B) A written waiver of constitutional rights was prepared as part of Respondent's plea negotiation. (Exhibit 54.) On page one, Respondent indicated that he intended to plead guilty to the three counts against him. In item 2, the form states: "I understand I have violated this section by (factual basis)." Respondent's attorney filled in the following: "In O.C. [Orange County], between Sept. 1989 & Feb. 1990 I conspired & agreed to commit 2° [second degree] burglary & on 02/2/90 did commit that offense in violation of P.C. § 459/460.2 / also on 02/10/90, I possessed stolen property, knowing it to be stolen. Stipulated factual basis exists." Respondent initialed this section, indicating that he understood it and agreed with it. Respondent signed the waiver form on December 3, 1991.

(C) In item 11 of the waiver form, Respondent acknowledged that he understood and agreed that the proposed sentence was that imposition of sentence would be suspended and he would be placed on three years informal probation, with a handwritten asterisk (*) inserted on the waiver form. Probation would include payment of $100 restitution and 200 hours of community service. There is a handwritten asterisk at the bottom of the page next to the

following handwritten statement:[2] "No judgment imposed for six months: if . [defendant] completes community service, judgment ([UNINTELLIGIBLE] re probation) to be imposed + P.C. 1203.4 relief granted on same date."

(D) Respondent had made it known to his attorneys at the time that he planned on becoming a licensed physician and that he wanted a disposition of the criminal case that would not prevent this from happening. Respondent mentioned this to his attorney Frank Ospino, who handled the preliminary hearing. Respondent then hired attorney Ronald MacGregor, who had more trial experience, when it appeared his case would go to trial. On the day the plea was negotiated, Michael Garey was Respondent's attorney of record. Respondent received advice from his attorneys that the case could be resolved in a way that the charges would be eventually dismissed.

17. In an informal conference on December 3, 1991, the Superior Court judge indicated that he would impose this indicated sentence. E. Thomas Dunn, the Deputy District Attorney who prosecuted the criminal case, wrote on the waiver form that his office was not in agreement with the proposed sentence. Dunn testified that, at that time in Orange County courts, it was not unusual for this type of plea to be arranged in misdemeanor cases in Municipal Court concerning petty offenses or drug diversion. However, for the type of charges against Respondent, Dunn characterized the arrangement as highly unusual.

18. On June 26, 1992, at the hearing on the balance of Respondent's sentence, he was again represented by Garey. The Court entered an order that: Respondent had pled guilty to the three counts as felonies; the offenses were reduced to misdemeanors under Penal Code section 17, subdivision (b); imposition of sentence was suspended and Respondent was placed on probation for three years on terms including that he perform 200 hours of community service, with a note that the community service had been completed; and that the minute order constituted "the (amended) probation order." There was no indication that any relief under Penal Code section 1203.4 was considered or granted at that time, as was contemplated in the waiver form. (See Finding 16 (C)).

19. Following Respondent's arrest after the events in February 1990, he was discharged for cause from UC-Irvine, with the condition that he could apply for re-entry only with the specific approval of the Chancellor. There was no evidence that Respondent contested the discharge. Respondent considered himself as having been expelled from UC-Irvine.

20. Respondent did not use any of the 311 quarter credits he received at UC-Irvine to qualify for medical school. Instead, he began over, attending numerous community colleges and other colleges, including Golden West College, Coastline College, and California State University, Los Angeles.

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[2] Although the handwriting and copy are not completely legible, testimony of a witness familiar with both the defense attorney who wrote it and his writing has assisted the Court in determining the content.

21. Respondent entered medical school at St. Louis University in Missouri in August 1992, and graduated with a distinction in research in May 1996. He performed his internship in internal medicine at Loma Linda University Medical Center from July 1996 to June 1997. He had returned to southern California because of problems that arose in his father's business and a desire to be closer to his family and assist during that time.

22. While doing his internship, Respondent considered obtaining a physician's license in California and reviewed the application. In 1997, he sought legal advice concerning the questions on the application relating to his time at UC-Irvine and his convictions. He first sought advice from Garey, his criminal defense attorney. Garey informed him that the criminal charges had not been dismissed, and then prepared a petition for relief under Penal Code section 1203.4 that was signed by Respondent on February 5, 1997.

23. (A) This Petition and Order are significant in several respects. In it, Respondent declares, under penalty of perjury, that he is the defendant "who was convicted of the misdemeanor offense of violation of" various Penal Code sections "on or about 7/23/92."[3] The Petition reflects that Respondent fulfilled the terms of his probation and that he had been discharged from probation pursuant to Penal Code section 1203.3. These two representations are contradictory, and there is no other evidence that Respondent had been discharged from probation pursuant to Penal Code section 1203.3. The Petition requests that he be permitted to withdraw his plea of guilty.

(B) The Petition then states: "The granting of this order does not relieve the defendant of the obligation to disclose this conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency."

(C) The Order granting the petition was signed on April 8, 1997, and filed on April 9, 1997. Pursuant to the Order, the plea of guilty was set aside and vacated, a plea of not guilty was entered, and the complaint was dismissed.

24. Respondent was unhappy that Garey had not obtained an order of dismissal in 1992, and he sought further legal advice. Respondent was referred to attorney Robert Croissant in 1997. Croissant advised Respondent that his conviction need not be reported on the license application, and that Respondent did not need to reveal his undergraduate attendance at UC-Irvine on the license application. (See Exhibits 20 and H.)

25. Croissant advised Respondent that the dismissal processed by Garey "was also still not complete." (See Respondent's declaration in Exhibit C.) Croissant prepared an Amended Petition under Penal Code section 1203.4, signed by Respondent under penalty of perjury on May 20, 1997. The Amended Petition was on the same form, and contained the same recitals, as that noted in Findings 22 and 23 above, with the change that, instead of requesting that Respondent be permitted to withdraw a plea of guilty, it requested to withdraw a plea of "nolo

[3] There is no record in evidence of any court action taken on this date.

contendre [sic]." The Order granting the petition was signed on May 23, 1997, and it was filed on August 18, 1997. (Exhibit 25, p. 13.) Croissant sent a copy of this Order to Respondent, and returned other papers to him, by letter dated October 27, 1997. (Exhibit R.)

26. For reasons not explained in the record, Croissant prepared another Amended Petition under Penal Code section 1203.4, also signed by Respondent under penalty of perjury on May 20, 1997. The Petition was the same as noted in Finding 25, except that the request to withdraw the plea of "nolo contendre [sic]" was written slightly differently, and there is handwriting at the top stating "Duplicate Original." The Order granting the petition was signed and filed on July 10, 1997. (Exhibit 25, p. 14.)

27. In 1997, Penal Code section 1203.4 included the following provision: "The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, [or] for licensure by any state or local agency . . . ." This language has not changed to the present.

28. There was no direct evidence of the specific language contained in the Medical Board application for licensure that Respondent had obtained and had asked Croissant to review. However, from the totality of the evidence, it is inferred that the questions on undergraduate schools attended and convictions are similar, if not identical, to questions 11 and 22 in the application Respondent eventually submitted in 2000. (Exhibit 4.) Question 22 asks whether the applicant was ever convicted of or pled nolo contendere to any violation of law. It adds the following instruction: "YOU ARE REQUIRED TO LIST ANY CONVICTION THAT HAS BEEN SET ASIDE AND DISMISSED OR EXPUNGED, OR WHERE A STAY OF EXECUTION HAS BEEN ISSUED." (Emphasis in original.)[4]

29. Pursuant to Business and Professions Code sections 480 and 490, licensing boards can deny an application for a license or suspend or revoke an existing license based on a qualifying conviction "irrespective of a subsequent order under section 1203.4 of the Penal Code."

30. When the plea negotiation was entered into on December 3, 1991, the advice received by Respondent from Garey, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect. The waiver form clearly indicated that Garey intended to return to court six months later to request relief for Respondent under Penal Code section 1203.4. Equally clearly, that code section and the standard form for the petition and order for such relief advise a defendant that he is not relieved of the

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[4] Although the words "expunge" and "expungement" are nowhere contained in Penal Code section 1203.4, the process for relief under that section is commonly, if incorrectly, referred to as an expungement of the conviction. (*People v. Frawley* (2000) 82 Cal.App.4th 784, 791-2.)

obligation to disclose the conviction in response to any direct question contained in any application for licensure by a state agency. Advice given in December 1991 that Respondent would not need to reveal the conviction was incorrect for at least two reasons: first, the anticipated sentence did not allow for relief under Penal Code section 1203.4 for another six months; and second, even with such relief, the conviction must be disclosed on an application for licensure to the Board, a state agency, a requirement under both the Penal Code and the Business and Professions Code. When Garey repeated the advice to Respondent when the first Petition for relief was filed in 1997, that advice was still legally incorrect.

31. The advice received by Respondent from Croissant later in 1997, when the two later petitions for relief were submitted and the orders issued, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect for the same reasons as set forth in Findings 27, 28, 29 and 30. Further, Croissant had reviewed the application and should have been familiar with the specific instruction to reveal convictions even after they were set aside and dismissed, or expunged.

32. After completing his internship in 1997, Respondent was accepted into a highly competitive residency in dermatology at St. Louis University. This residency lasted from July 1997 to June 2000. Respondent received a license to practice medicine in the state of Missouri in July 1997. Respondent's performance in the residency program was "exceptional," according to the associate dean of the medical school, Dr. Neal Pennys, who was also the chairman of the Dermatology Department. Respondent had the highest scores on yearly academic exams, and received honors in his third year of residency, based largely on observations of his patient interactions and practices.

33. On January 11, 2000, the Board received Respondent's application for physician and surgeon's licensure. The application included Respondent's declaration, under oath, that the information contained therein was true and correct. Question 11A of the application required Respondent to list "the names and addresses of all colleges or universities where pre-professional, postsecondary instruction was received." (Emphasis in original.) The question also required applicants to "submit official transcripts . . . for each school attended." Respondent did not list, or submit a transcript from, UC-Irvine.

34. Respondent explained that, in his view, he had been expelled from UC-Irvine and did not receive any valid credits for the classes he had completed. Respondent relied upon the advice he received from Croissant to the effect that his attendance at UC-Irvine did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing that he had attended UC-Irvine.

35. Croissant recalled reviewing the application and a letter from UC-Irvine dated April 2, 1990, concerning Respondent's suspension from UC-Irvine. This letter is not in evidence, however it is mentioned in Croissant's letter dated December 28, 2006. (Exhibit R.) Croissant relied upon Respondent's incorrect belief that he had not received valid, completed credits from UC-Irvine. Croissant did not review transcripts or seek any information from UC-Irvine before

rendering his advice to Respondent. Croissant believed the question on the application required Respondent to list only schools where he had successfully completed credits.

36. Croissant's understanding of the nature of Respondent's credits earned at UC-Irvine, based almost exclusively on information provided by Respondent, was incorrect. Croissant's and Respondent's interpretation of the question on the application was also incorrect. The plain language of the question asks for a list of universities attended. As Respondent attended UC-Irvine, he should have listed it in his reply. Under all of the circumstances, Respondent's reliance on Croissant's advice on this subject was not reasonable.

37. The application also asked for information about convictions. See Finding 28 for the specific language of the question. Respondent answered "no" to that question.

38. Respondent explained that he had told Garey, his attorney, that he would agree only to an outcome in the criminal case that would result in no record, and had been told the plea negotiation would do so. Respondent also relied upon the advice he received from Croissant to the effect that his criminal case had been dismissed and did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing his convictions in 1991.

39. The Board issued Respondent's license on March 24, 2000. According to Cindy Oseto, an Associate Analyst for the Board who has reviewed numerous applications and made recommendations as to whether they should be approved, denied, or investigated further, if an application contained information that an applicant had been convicted of a theft crime, further investigation would be pursued. The Board often considers disclosure of a conviction as an element of rehabilitation and may consider issuing a probationary license. However, according to Oseto, the failure to disclose a theft crime raises issues of honesty and integrity, and she would recommend either denial of that application or perhaps a conditional license. Further, she would recommend denial of an application where the applicant had not disclosed attendance at a college from which he had been dismissed for cause due to cheating or for helping another student cheat.

40. From July 2000 to January 2001, Respondent practiced with the Facey Medical Group in Mission Hills, California. Respondent opened a solo practice in February 2001 in Beverly Hills. Although there was little testimony from Respondent about the nature of his practice, this description is from an interview he had with a Board investigator on April 26, 2005. (Exhibit 22.) At that time, Respondent had six office locations: Bakersfield, Lancaster, Apple Valley, Beverly Hills, West Hills and Valencia. Bakersfield is a solo practice. In the other offices he shared space with other physicians. He employed another physician who worked at the West Hills and Lancaster locations, and two nurse practitioners and two physician assistants who rotated among some of his offices. Respondent worked at each office one day per week, except Beverly Hills, one-half day every two weeks. He had privileges at Antelope Valley and Northridge Hospitals. Respondent's practice consisted of general dermatology, as well as skin cancer treatment and cosmetic dermatology. Respondent saw about 30 – 40 patients per day. Respondent testified that he goes out of his way to communicate with his patients, and often

gives patients his business card containing his personal cell phone number, and answers patients' calls at night and on weekends.

41. A colleague, Dr. Fariborz Satey, is a pediatrician and the medical director of Heritage Health Care group in the Antelope Valley. Dr. Satey has referred patients to Respondent for six or seven years, and gets feedback from those patients that they received excellent care from Respondent. Dr. Satey receives no compensation for these referrals. When he mentioned to Respondent that it would be helpful to have a dermatologist in the Lancaster area for the convenience of patients, Respondent opened his office in Lancaster.

42. Other incidents established by the evidence are not alleged in the Second Amended Accusation but, nevertheless, provide useful information in the nature of circumstances that are aggravating, mitigating, bear on Respondent's credibility and rehabilitation, or otherwise augment the record.

43. On February 18, 1993, Respondent signed an Application for Naturalization from the Immigration and Naturalization Service (INS). In reliance on the prior advice he had received from attorneys Garey and MacGregor, confirmed by another consultation with MacGregor, Respondent answered "no" to a question that asked whether he had ever been arrested, charged, indicted or convicted for breaking or violating any law. The application was received on March 16, 1995, and Respondent was interviewed by an INS "adjudicator" on March 24, 1995. During the interview, Respondent answered "no" to questions of whether he had any arrests, expungements or convictions. Respondent was granted citizenship in 1995.

44. On March 4, 2005, an Indictment was filed against Respondent in the United States District Court for the Central District of California alleging that Respondent unlawfully procured citizenship by falsely representing on his application that he had never had an arrest, conviction or expungement. Respondent hired attorney Robert Shapiro to represent him. After Respondent and Shapiro's associate met with the Assistant U.S. Attorney and provided documents and other information concerning the convictions and the legal advice that Respondent had received, the government moved to dismiss all charges. The motion was granted by Order dated April 29, 2005.

45. (A) Respondent submitted several applications for licensure to the Department of Motor Vehicles (DMV), some of which contain possible inconsistencies. Respondent testified that he received his driver's license while he was in high school, which would have been in 1986 or before.

(B) In evidence are documents indicating that Respondent was issued a driver's license, number C5120518, on August 3, 1993, under the name Combiz Omidi. It was not established whether this was inconsistent with his statement of earlier licensure, or a license renewal.

(C) On January 23, 1997, Respondent signed, under penalty of perjury, an application for a driver's license. The application indicates it is for an original license, not a

renewal or name change. The application is in the name of Julian C. Omidi. It indicates that the applicant has a license in Missouri, although Respondent testified that this part of the application is not in his handwriting. Respondent answered "no" to a question asking whether he applied under a different name within the last seven years. This application was assigned DMV number B7990414. Respondent testified that he called the DMV and cancelled this application. There was no evidence that any driver's license was issued based on this application.

(D) Respondent's current driver's license, number C5120518, was issued on May 14, 2004, in the name of Combiz Omidi, and will expire in 2008.

46. (A) In May 1997, Respondent submitted his application for licensure as a physician in Missouri. (Exhibit 42.) He certified that all statements therein were true. He answered "no" to the question if he had ever been arrested, charged, found guilty or entered a plea of nolo contendere in a criminal prosecution, whether or not sentence was imposed, including suspended imposition of sentence or suspended execution of sentence.

(B) In answer to an instruction to list all universities and colleges attended, Respondent did not include UC-Irvine. Respondent testified that he had discussed this application with Croissant in 1997, and answered these two questions based upon legal advice he received.

(C) The application asked for Respondent to list his activities since graduation from high school, and to account for all dates to the present. For the period 7/86 through 5/90, Respondent wrote that he was vice president of his father's building and engineering corporation, with duties as building and engineering manager and construction site supervisor. He added that the company closed as of his father's death in August 1986. Respondent wrote that, for the period 10/86 through 8/87, he was a part-time night medical transcriptionist [sic], and from 2/88 to "the present," that is, May 1997, he was a part-time free lance computer database programmer and networking consultant.

(D) Respondent did not include UC-Irvine in this list of activities since high school graduation.

(E) Respondent's testimony about his lack of other activities during his attendance at UC-Irvine (Finding 5) is in direct contrast, and incompatible, with his list of activities in this application.

47. In February 2002, Respondent submitted an application for renewal of his medical license in Missouri. He certified that all statements therein were true. He answered "no" to the question if he had ever been arrested, charged, found guilty or entered a plea of nolo contendere in a criminal prosecution, whether or not sentence was imposed, including suspended imposition of sentence or suspended execution of sentence. Respondent testified that, as there had been no change in circumstance since the events and advice he received in 1997, he was relying on legal advice in making this answer.

48. The Superior Court concluded that the Board improperly considered the evidence concerning Respondent's application for medical licensure in Missouri as a factor for purposes of determining penalty. The Board has left intact Findings 46 and 47 concerning the Missouri application only for purposes of historical context – that is, to accurately reflect what occurred during the hearing. However, the Board has complied with the court's order and has disregarded those findings in reaching its decision after remand and in determining the appropriate penalty in this matter.

49. (A) In about September 2006, Respondent consulted with attorney C. David Haigh. Haigh was very familiar with Garey, as they had both been deputy public defenders together and had practiced together in the past. On Respondent's behalf, Haigh filed a motion for the criminal case to be dismissed under Penal Code section 1385, and for the dismissal to be made nunc pro tunc as of June 26, 1992. The motion was supported by a declaration of Respondent (Exhibit C, pages 6 – 8), in which he explained some of the events and the legal advice he had received.

(B) The motion was granted on November 30, 2006, by Orange County Superior Court Judge Ronald Owen, the same judge who presided over the proceedings against Respondent on December 3, 1991, and June 26, 1992. An Order was filed that same date whereby Respondent withdrew his plea of guilty/nolo contendere, the matter was dismissed pursuant to penal Code section 1385, and the order was to be effective nunc pro tunc as of June 26, 1992.

50. Complainant contended that the dismissal order under Penal Code section 1385 entered in November 2006 is void, for several technical, procedural and substantive reasons. This Administrative Court does not have the authority or jurisdiction to reach such a conclusion. (*DeRasmo v. Smith* (1971) 15 Cal.App.3d 601.) The Superior Court ruled in this case that, since the convictions were dismissed under Penal Code § 1385, nunc pro tunc, effective June 26, 1992, "this order is effective and it means that it can no longer be said that petitioner was convicted of the crimes referred to above." The Superior Court also concluded that the Board improperly considered the convictions as a factor for purposes of determining penalty. The Board has left intact all of the Administrative Law Judge's factual findings regarding the criminal conviction (except former Finding 49, which is contradicted by the Superior Court's ruling) solely for purposes of historical context – that is, to accurately reflect what occurred during the hearing. However, the Board has complied with the court's order and has disregarded those findings in reaching its decision after remand and in determining the appropriate penalty in this matter.

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal; "so clear as to leave no substantial doubt and sufficiently strong to

command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted – but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability." (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (Id., at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

The testimony of "one credible witness may constitute substantial evidence" including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

"[T]he weight to be given to the opinion of an expert depends on the reasons he assigns to support that opinion." (Citation); its value "'rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion. . . .'" (Citation.) Such an opinion is no better than the reasons given for it (Citation), and if it is "not based upon facts otherwise proved, or assumes facts contrary to the only proof, it cannot rise to the dignity of substantial evidence. (Citations.)" (*White v. State of California* (1971) 21 Cal.App.3d 738, 759-760.)

"[T]he rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. 'Disbelief does not create affirmative evidence to the contrary of that which is discarded. 'The fact that the jury may disbelieve the testimony of a witness who testifies to the negative of an issue, does not of itself furnish any evidence in support of the affirmative of that issue and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative'.'" (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632, citing *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

3. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code[5] section 2235, authorizing disciplinary action where a license is obtained by

[5] All further statutory references are to the Business and Professions Code, except where indicated.

fraud or misrepresentation, for Respondent's misrepresentation in his license application regarding educational institutions he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

4. (A) Respondent's intent is irrelevant to the determination that Respondent obtained his license by misrepresentations in his application. The danger is in falsely certifying facts which are not true, as opposed to any intent to do evil. This is "regardless of the intent of the doctor signing the certificate." (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 556.)

(B) The duty to make a full disclosure in an application for a professional license is an absolute duty. Justification for a failure to perform that duty is not found in the excuse that the applicant was advised by some person, no matter how high in official position that person might stand, that disclosure is not necessary. Whether a failure to disclose is caused by intentional concealment, reckless disregard for the truth or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks integrity and/or intellectual discernment required of a professional. (See, *In re Gehring* (1943) 22 Cal.2d 708.)

(C) Respondent's reliance upon legal advice concerning disclosure of his attendance at UC-Irvine was not reasonable. The language of the application was clear and unequivocal. He was required to list all colleges attended and to attach transcripts. Respondent's belief that he did not have valid credits from UC-Irvine is an unsupported conclusion and without reason, and it does not appear in the evidence that Respondent or Croissant did anything to verify this unreasonable conclusion. Respondent's claim that he did not intend to deceive the Board by not disclosing his attendance at UC-Irvine is not credible and is rejected. It is determined that Respondent intended such deceit and, therefore, perpetrated a fraud on the Board.

(D Complainant established that Respondent's misrepresentations and fraud were material, in that his license application may have been treated differently had he made full disclosure. (See, *DeRasmo v. Smith, supra*, 15 Cal.App.3d 601.)

5. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, subdivision (e), for dishonesty for Respondent's misrepresentations regarding educational institutions that he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

6. (A) Neither party submitted any statutes, case law or argument to assist the court in determining to what extent, if any, Respondent's intent bears upon determining whether he committed "dishonesty" in failing to disclose his attendance at UC-Irvine. Dishonesty is a basis on which public employees may be discharged under Government Code section 19572, subdivision (f), and cases interpreting and applying that section are a useful reference.

(B) As set forth in *Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-19: "'Dishonesty' connotes a disposition to deceive. (Citation.) It 'denotes an absence of integrity; a disposition to cheat, deceive or defraud; . . .' (*Hogg v. Real Estate Comr.*, 54 Cal.App.2d 712, 717 [129 P.2d 709].)" Although the element of intent is discussed in the case of *Cvrcek v. State Personnel Bd.* (1967) 247 Cal.App.2d 827, it is in the nature of confirming that the trial court has discretion in making the determination of whether dishonesty has occurred, and the trial court is empowered to evaluate the evidence of lack of intent.

(C) The definitions of "dishonest" and "dishonesty" (Webster's Seventh New Collegiate Dict. (1969) p. 239), include references to willfulness, intent and fraud such that it may be reasonably concluded that there can be no dishonesty where there is no intent to deceive. As noted above, it is determined that Respondent intended to deceive the Board by failing to disclose his attendance at UC-Irvine. Such deceit constitutes dishonesty.

7. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, for unprofessional conduct, and section 2261, which defines unprofessional conduct as including "knowingly" signing a document which falsely represents the existence or nonexistence of a state of facts, in this case, the misrepresentations regarding the educational institutions that he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

8. As noted above, Respondent's failure to disclose his attendance at UC-Irvine was intentional and fraudulent. Intent is not required for discipline to be imposed under this code section. As stated in *Brown v. State Department of Health, supra*, 86 Cal.App.3d at 555-556:

"[W]e hold that 'knowingly' to make or sign a certificate which 'falsely represents' a state of facts, a person need only have knowledge of the falsity of the facts certified when making or signing the certificate. Our interpretation is not only in accord with statutory and decisional definitions, but will best protect the public. Factual certifications by medical doctors are used extensively throughout society for many and varied purposes. A false medical certification, regardless of the doctor's intent, may be put to great mischief. The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true. . . .

"Nor do we find appellant's argument to be persuasive that the use of the words 'falsely represents' requires a finding of intent to deceive. In the absence of express language, intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. (Citation.) The revocation or suspension of a license is not penal, the Legislature has provided for suspension to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity. (Citations.) The potential of harm from the existence of a false medical certificate, regardless of the intent of the doctor signing the certificate, requires that doctors refrain from signing false certificates."

9. Cause exists to suspend or revoke Respondent's license pursuant to sections 480, subdivision (a) and 2234, subdivision (f), for actions or conduct that would have warranted denial of his application for licensure for Respondent's misrepresentations regarding educational institutions he attended. See Factual Findings 2, 6, 9, 10, 11, 19, 33 through 36, and 42 through 45.

10. Cause does not exist to suspend or revoke Respondent's license pursuant to section 2236, for conviction of a crime substantially related to the qualifications, functions or duties of a licensee, pursuant to the determination of the Superior Court. See Factual Finding No. 50. .

11. The Board publishes guidelines for the use of Administrative Law Judges in determining the appropriate range of outcomes for statutory violations, referred to in California Code of Regulations, title 16, section 1361, and entitled "Manual of Disciplinary Orders and Disciplinary Guidelines" (9th Edition, 2003). These Guidelines acknowledge that they are not binding standards and that mitigating or other appropriate circumstances may establish a basis to vary from them.

For the violations of sections 2234 and 2261 found herein, the Guidelines recommend a maximum penalty of license revocation, and minimum penalties of stayed revocation and five or seven years probation on various terms including suspension, coursework, evaluation, monitoring and therapy.

12. On the one hand, Respondent presented convincing evidence that some of the acts that constitute violations of law resulted from his reasonable reliance on legal advice. That the advice was incorrect was not known to Respondent.

13. On the other hand, Respondent intentionally deceived the Board in failing to disclose his attendance at UC-Irvine, most likely in an attempt to prevent the Board from learning that he had been discharged for cause and the reasons therefore. The entirety of the record reveals that Respondent has a penchant for dishonesty, to bend his position and shade his statements to suit his needs, without consistent regard for the truth. The Superior Court found that Respondent's "failure to disclose his attendance at UCI was knowing and intentional" and that Respondent "knew the answer he gave was false." As a physician, Respondent is continually placed in positions where honesty is critical, including for example physician-patient interactions, billing, third-party payors, etc. Honesty is a core requirement for physicians. Respondent has shown neither recognition of the importance honesty plays in the qualifications to be a physician, nor any remorse for his misrepresentation and lack of honesty to the Board. Respondent is not entitled to any benefit of the doubt – there is no doubt. His misrepresentation and dishonesty, occurring as they did in the process of obtaining his license, go to the core of his ability to practice his profession.

Under all of the circumstances herein, the health, safety and welfare of the people of the State of California can be protected only by a disciplinary order that revokes Respondent's license.

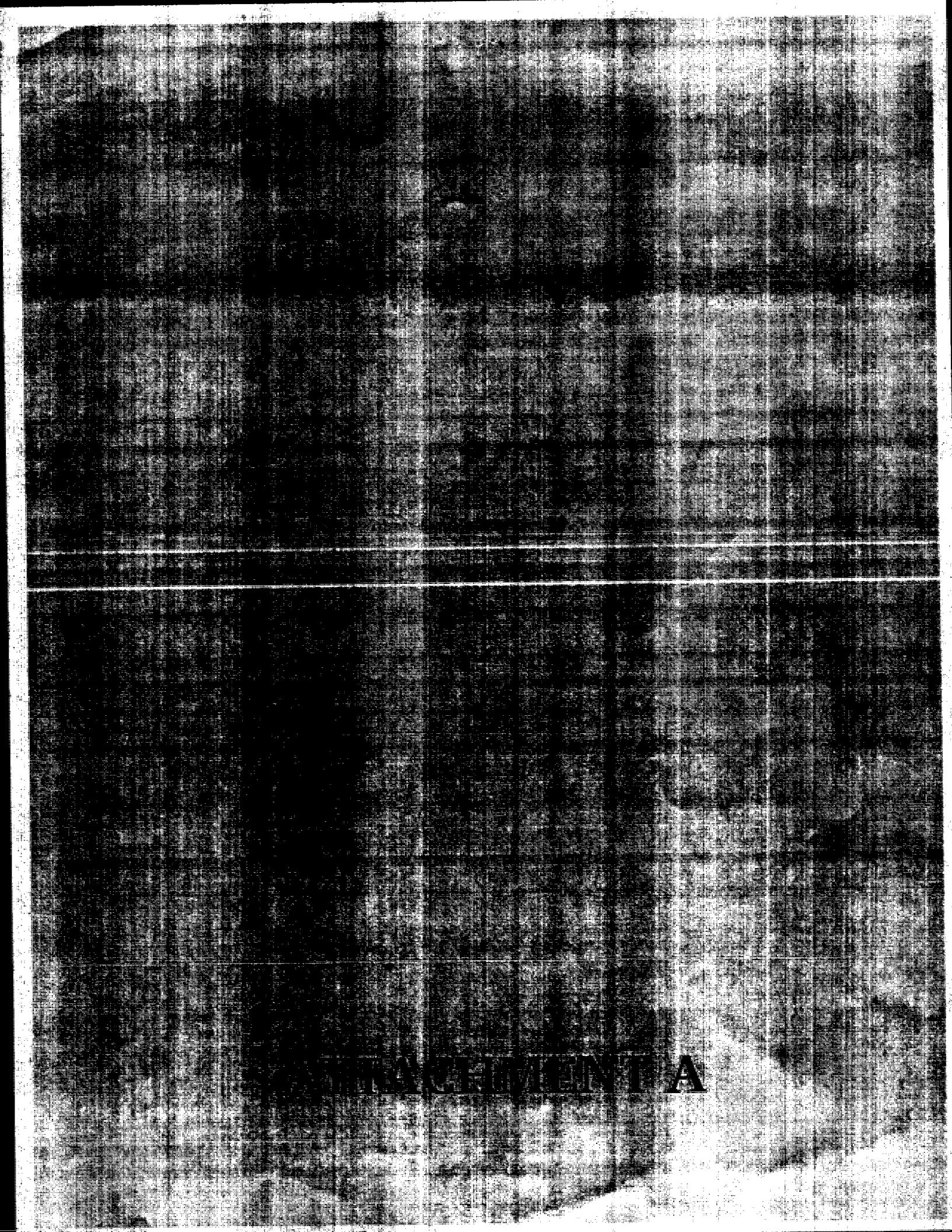
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Having reconsidered its decision in light of the court's final ruling, the Board revokes Physician's and Surgeon's Certificate number A71181 issued to Respondent C. Julian Omidi, M.D., pursuant to Legal Conclusions 1 through 9, and 14, separately and for all of them, effective back to October 26, 2007, the effective date of its prior decision which was not stayed by the Court.

IT IS SO ORDERED this 18th day of September, 2008.

BARBARA YAROSLAVSKY
Chairperson, Panel B
Medical Board of California


ATTACHMENT A

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

C. JULIAN OMIDI, M.D., Petitioner, v. MEDICAL BOARD OF CALIFORNIA, Respondent.	CASE NO. 07CS01401 **PEREMPTORY WRIT OF MANDAMUS** Hearing Date: July 25, 2008 Time: 1:30 p.m. Dept.: 11 Hon. Judge Gail D. Ohanesian

The People of the State of California

To the Medical Board of California, Respondent:

WHEREAS ON AUG 20 2008, judgment having been entered in this action, ordering that a peremptory writ of mandamus be issued from this court,

YOU ARE HEREBY COMMANDED immediately upon receipt of this writ to vacate and set aside your decision of September 26, 2007, in the administrative proceedings entitled In the Matter of the Accusation Against C. Julian Omidi, which proceedings are hereby remanded to you, to reconsider your action in the light of this court's final ruling, and to take any further action specifically enjoined on you by law; nothing in this writ shall limit or control the discretion legally vested in you.

YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before sixty (60) days from the issuance of this writ, setting forth what you have done to comply.

Dated: AUG 20 2008

[Seal]

Dennis Jones
Clerk
By C. Beebout CBeebout
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

C. JULIAN OMIDI, M.D., Petitioner, v. MEDICAL BOARD OF CALIFORNIA, Respondent.	CASE NO. 07CS01401 **JUDGMENT GRANTING PEREMPTORY WRIT OF MANDAMUS** Hearing Date: July 25, 2008 Time: 1:30 p.m. Dept.: 11 Hon. Judge Gail D. Ohanesian

This matter came regularly before this court on July 25, 2008, for hearing in Department 11 of the Superior Court, the Honorable Gail D. Ohanesian presiding. Gene Livingston and Ray Sardo of Greenberg Traurig, LLP, and Armand Arabian appeared as attorney for petitioner. Edward K. Kim, Deputy Attorney General, of the Department of Justice appeared as attorney for respondent.

The record of the administrative proceeding having been received into evidence and examined by the court and no additional evidence having been received by the court, arguments having been presented and the court having made a tentative ruling prior to the hearing (see Attachment A),

IT IS ORDERED that:

1. The tentative ruling shall be deemed the court's final ruling;

2. A peremptory writ of mandamus shall issue from the court, remanding the proceedings to respondent and commanding respondent to vacate and set aside its decision of September 26, 2007, in the administrative proceedings entitled In the Matter of the Accusation Against C. Julian Omidi.

3. The writ shall further command respondent to reconsider its action in light of the final ruling, and to take any further action specifically enjoined on it by law; but nothing in this judgment or in that writ shall limit or control in any way the discretion legally vested in respondent.

4. The writ shall further command the respondent to make and file a return to the writ within sixty (60) days of the writ's issuance, setting forth what respondent has done to comply.

5. Each side shall bear his/its own costs.

Dated: AUG 20 2008

GAIL D. OHANESIAN

HONORABLE GAIL D. OHANESIAN
JUDGE OF THE SUPERIOR COURT

Approved as to form:

EDMUND G. BROWN JR., Attorney General of the
State of California
PAUL C. AMENT
Supervising Deputy Attorney General

EDWARD K. KIM
Attorneys for Respondent,
MEDICAL BOARD OF CALIFORNIA,
DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA

ATTACHMENT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

Date: 07/25/2008 Time: 01:30:00 PM Dept: 11

Judicial Officer Presiding: Judge Gail D Ohanesian
Clerk: C. Beebout

Bailiff/Court Attendant: None
ERM: None
Reporter: T. Hall #10516,

Case Init. Date: 11/09/2007

Case No: 07CS01401

Case Title: C JULIAN OMIDI. M.D. VS MEDICAL BOARD OF CALIFORNIA

Case Category: Civil - Unlimited

Moving Party: Julian C Omidi MD
Causal Document & Date Filed:Legacy Case Participant Sheet (Conversion Only), 10/18/2007

Appearances:

C Julian Omidi is present

Gene Livingston is present for C Julian Omidi

Edward K Kim is present for Medical Board of California
Armand Arabian and Ray A. Sardo are present for C. Julian Omidi.

NATURE OF PROCEEDINGS: PETITION FOR WRIT OF MANDATE

TENTATIVE RULING

Petitioner C. Julian Omidi is challenging the decision of Respondent Medical Board of California adopted on September 26, 2007, which resulted in the revocation of petitioner's license as a physician and surgeon. The independent judgment test applies to this court's review of the administrative decision. Petitioner challenges the decision on several grounds. The issues in this case turn on the fact that petitioner was, at one time, convicted of some misdemeanor crimes and he was expelled from U.C. Irvine based on his conduct underlying those crimes. When petitioner applied for his medical license in California, petitioner did not disclose the fact of his prior convictions and he did not disclose the fact that he had attended U.C. Irvine. Petitioner, in essence, claims that he was justified in not disclosing those facts. Respondent contends that petitioner's failure to disclose these facts is grounds to now revoke petitioner's medical license.

1. Business and Profession Code section 2236 authorizes respondent to discipline a medical license based on a licensee's conviction for an offense related to the duties of a physician or surgeon.

Petitioner Omidi was in fact convicted of misdemeanor crimes in December, 1991, in Orange County Superior Court. Defendant pled guilty to the crimes of conspiracy to cheat or defraud, burglary and receipt of stolen property, all as misdemeanors. Defendant was placed on probation and ordered to complete community service. Pursuant to the minute order from the proceedings in December, 1991, a date was set for further sentencing in June, 1992. That minute order states, in effect, that, on successful completion of the terms of his probation, petitioner could return to court and change his pleas from guilty to no contest. A no contest plea, however, would have the same effect as a guilty plea for purposes of his misdemeanor convictions. It is more likely that it was contemplated that, on successful completion of

REV'D

the terms of his probation, petitioner could return to court and petition for relief under Penal Code section 1203.4. If P.C. section 1203.4 relief was granted, that would allow petitioner to withdraw his guilty pleas, enter pleas of not guilty instead, the convictions would be set aside and the charges dismissed. Petitioner did in fact make several attempts to obtain relief under P.C. section 1203.4 over the years. Those attempts were all botched. Relief under P.C. 1203.4 would not relieve petitioner of the need to disclose his convictions in any event.

The crimes that petitioner was convicted of in 1991 are substantially related to the qualifications of a physician or surgeon.

In November, 2006, after petitioner submitted his application for licensure in California but before the administrative hearing in this matter, petitioner was successful in obtaining an order from the Orange County Superior Court allowing him to withdraw his guilty pleas from 1991 and dismissing the charges against him under P.C. section 1385, nunc pro tunc, effective June 26, 1992. Notwithstanding respondent's attempts to challenge the validity of the order of dismissal under P.C. section 1385, this order is effective and it means that it can no longer be said that petitioner was convicted of the crimes referred to above. Accordingly, the court finds that discipline based on B & P Code section 2236 is not supported the weight of the evidence.

2. B & P Code section 2235 authorizes discipline of a license for fraud or misrepresentation. Respondent found cause for discipline under this authority based on petitioner's statements in his license application. No authority has been provided for the proposition that misrepresentation must be intentional as opposed to negligent. However, the finds that petitioner's failure to disclose his attendance at UCI was knowing and intentional. The ALJ found that it was reasonable for petitioner to rely on advice of counsel regarding whether or not petitioner needed to disclose the criminal convictions from 1991. The ALJ further found that it was not reasonable for petitioner to rely on advice of counsel regarding his attendance at UCI. There is nothing confusing about this question. Petitioner knew the answer he gave was false. He intentionally gave that false answer because he did not want respondent to know about the circumstances regarding his expulsion from UCI. The obvious reason for petitioner's not wanting to disclose that information was his reasonable fear that it might effect the approval of his license application. The misrepresentation was material. The testimony of Cindy Ostero is sufficient to support the finding that a different result would have occurred. The court finds that discipline based on B & P Code section 2235 is supported by the weight of the evidence and the conclusions on this issue are supported by the findings.

3. Another ground for discipline in this matter was B & P Code section 2234(e) for an act involving dishonesty substantially relating to the qualifications of a physician and surgeon. To the extent that this is based on petitioner's failure to disclose his attendance at UCI, the court finds that this finding is supported by the weight of the evidence for the same reasons as stated above. And the conclusions on this issue are supported by the findings.

4. Discipline was also imposed pursuant to B & P Code section 2234 for unprofessional conduct for executing a false document as defined in B & P Code section 2261. To the extent that this ground for discipline is based on petitioner's failure to disclose the criminal convictions from 1991, the court finds that petitioner's conduct in that regard was not a knowing execution of a false document. Petitioner reasonably relied on the advice of counsel in this regard as found by the ALJ. Petitioner's conduct of failing to disclose his attendance at UCI does support discipline under these sections. The weight of the evidence does support the finding that petitioner's conduct in this regard was a knowing execution of a false document. And the conclusions to that extent are supported by the findings.

5. B & P Code section 2234(f) authorizes discipline for conduct which would have warranted the denial of the license application originally. Ostero's testimony is somewhat equivocal on this point. However, the court finds that Ostero's testimony taken as whole is sufficient to support the findings regarding discipline on this ground and the conclusions on this issue are supported by the findings.

6. Petitioner also contends that evidence concerning his application for a medical license in Missouri was improperly considered as a factor for purposes of respondent's determination of penalty. Further, petitioner contends that his convictions from 1991 that were later dismissed were also improperly considered as a factor for purposes of respondent's determination of penalty. The court concurs. Petitioner was not given fair notice that the evidence concerning his application for licensure in Missouri

Case Title: C JULIAN OMIDI. M.D. VS MEDICAL BOARD OF CALIFORNIA Case No: 07CS01401

as far as it concerned his activities from 1986-1990 would be used in any way in this proceeding. As noted, petitioner no longer has any sort of record of criminal conviction.

7. Petition for Writ of Administrative Mandate is granted for the reasons stated above. The matter is ordered remanded to respondent for further proceedings consistent with this ruling. The court can not determine that the same result as to penalty would be reached in light of this ruling. Petitioner's other contentions are without merit. Counsel for petitioner shall prepare a form of judgment for the court's signature and a separate from of writ for issuance by the clerk consistent with this ruling and in compliance with Cal. Rules of Court, rule 3.1312. Each side shall bear his/its own costs. Respondent shall file a return to the writ within 60 days of its issuance.

COURT'S RULING

The Court heard oral arguments from counsel. The matter being submitted, the Court affirmed its tentative ruling.

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

In the Matter of the Accusation Against:	)	
	)	No. **17-2004-162146**
C. JULIAN OMIDI, M.D.	)	
Physician and Surgeon's Certificate No. A 71181	)	
	)	
Petitioner	)	
	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Henry R. Fenton, attorney for C. Julian Omidi, M.D., for reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on **October 26, 2007 .**

IT IS SO ORDERED: October 16, 2007 .

Barbara Yaroslavsky,
Chair Panel B
Medical Board of California

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

In the Matter of the Accusation Against:	)	
C. JULIAN OMIDI, M.D.	)	File No. 17-2004-162146
Physician's and Surgeon's Certificate No. A 71181	)	
Respondent	)	

DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **October 26, 2007 .**

IT IS SO ORDERED **September 26, 2007 .**

MEDICAL BOARD OF CALIFORNIA

By _____
Barbara Yaroslavsky
Chair
Panel B
Division of Medical Quality

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

In the Matter of the Accusation Against: C. JULIAN OMIDI, M.D. aka Kambiz Beniamia Omidi Physician & Surgeon Certificate No. A71181 Respondent.	Case No. 17-2004-162146 OAH No. L2006070409

PROPOSED DECISION

This matter came on for noticed hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on July 9, 10, 11, 12 and 24, 2007, at Los Angeles, California. Edward K. Kim, Deputy Attorney General, and Paul C. Ament, Supervising Deputy Attorney General, represented Complainant David T. Thornton. Respondent C. Julian Omidi, M.D. was present and was represented by Henry R. Fenton and Robert L. Shapiro, Attorneys at Law.

Evidence was received, the matter was argued, and the matter was submitted for decision on July 24, 2007.

Rulings Affecting the Accusation and the Issues

During the hearing, Complainant filed a Second Amended Accusation (Exhibits 51 and 55) that contained new charges. Respondent objected to, and made a motion to strike, some of the new allegations on the grounds that the new charges therein were barred by the statute of limitations found in Business and Professions Code section 2230.5. After argument by both parties, and for the reasons more specifically set forth in the record, the objection was sustained and the following portions of the Second Amended Accusation were stricken:

a. Paragraph 19 (page 7, lines 15 – 22);

b. Paragraph 20 (page 7, line 23 to page 8, line 3);

c. Paragraph 22 (b) (page 8, lines 19 and 20);

d. Later references to prior paragraphs that are incorporated by reference (page 8, lines 21 and 22; page 9, lines 17 and 18; and page 9, lines 23 and 24).

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Accusation, First Amended Accusation and Second Amended Accusation were filed by Complainant in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On March 24, 2000, the Board issued Physician and Surgeon Certificate number A71181 to Respondent. The Certificate was in full force and effect from that time to the hearing in this matter, and was to expire on July 31, 2007, unless renewed. If not renewed, the Board maintains jurisdiction over the matter pursuant to Business and Professions Code section 118, subdivision (b).

3. At different times, Respondent has also been known as Combiz Omidi, Kambiz Omidi, Kambiz Beniamia Omidi, Combiz Julian Omidi and Julian C. Omidi. He changed his name to Julian because he believed it would be easier for his patients and his practice.

4. In summary, the Second Amended Accusation alleges that Respondent's license is subject to discipline under various sections of the Business and Professions Code for the following acts: (a) Respondent attended the University of California, Irvine (UC-Irvine) but failed to include UC-Irvine when answering a question on his license application that requested information on all undergraduate schools he attended; (b) Respondent cheated on exams while at UC-Irvine; (c) Respondent was convicted of three related crimes in 1991; and (d) Respondent failed to disclose these convictions when answering questions on his license application that requested information on convictions.

5. Respondent was born in Iran in July 1968. When he was ten years old, he and his family moved to the United States, where he attended school from grade 5 and afterward. Respondent attended University High School in Irvine, and successfully completed several advanced placement courses. After graduating high school, Respondent entered UC-Irvine in 1986. He lived at home, about one mile from campus, with his mother, father and younger brother. Respondent was extremely devoted to pursuing his education, and did not have any job or participate in any extracurricular activities while attending UC-Irvine. He did not date or develop many social relationships, and had few friends. He described his usual day as arriving at school about 7:30 a.m. and staying until 10:30 p.m., coming home, taking a nap, and studying until 3:00 a.m. Respondent stated that he liked this schedule. Respondent's

goal, from an early age, was to attend medical school and become a physician. There are seven generations of doctors in Respondent's family.

6. Respondent began attending UC-Irvine in the fall quarter of 1986 and was dismissed from the university, with cause, effective May 5, 1990. He was a triple major, in economics, psychology and biological sciences. His transcript reveals an unusual number of quarters in which he registered for many more courses than average. The average number of units per quarter is 16, and students rarely take more than 20 units for any extended period of time. In total, Respondent earned credit for 311 units at UC-Irvine, with a grade point average of 3.4. His transcript (Exhibit 18) is summarized as follows:

Quarter	Units taken/ Completed	Other information
Fall 1986	13/13	Deans Honor List (DHL)
Winter 1987	20/20	DHL
Spring 1987	19/8	Withdrew from 11 units
Fall 1987	27/27	DHL
Winter 1988	38/38	DHL
Spring 1988	43/43	DHL
Fall 1988	56/50	Failed 6 units
Winter 1989	58/26	Failed 9 units; incomplete for 23 units
Spring 1989	23/23	
Fall 1989	35/31	Incomplete for 4 units

7. The circumstances under which Respondent registered for and completed many of his classes were suspicious. Respondent was able to add or change courses without always getting all of the required approvals from teachers. Permission from a Dean was required to register for more than 20 units per quarter, and it was not clear that Respondent had obtained those approvals. The current registrar at UC-Irvine testified that, in her 27 years of experience, she had never seen numbers of units this high taken over this number of quarters. The registrar at UC-Irvine when Respondent attended was aware of Respondent because of the number of units for which he was registered beginning in the winter quarter of 1988 and thereafter. When she advised the senior academic counselors in Respondent's majors of this situation, she was instructed to prepare a report each quarter, which she dubbed "the Omidi report," of all students registered for 24.7 units or more. Other than Respondent, the few students listed in the report were usually involved in the performing arts, where individual instruction and performance groups often resulted in a high number of credits. There was no evidence of what occurred after Respondent's name appeared on the reports for various quarters.

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8. Although the registrars believed the circumstances of the high number of Respondent's units, and the manner in which he registered for these units, may have been suspicious, it was not established, by clear and convincing evidence, that Respondent cheated in any courses while at UC-Irvine.

9. On February 2, 1990, Respondent was involved with other students in a burglary of exam papers from an office at UC-Irvine. It was not established, as alleged, that Respondent obtained, by illegal means, master keys to faculty offices in order to steal examinations. However, in a search of a car used by Respondent, a key was found for an office in the Chemistry Department at UC-Irvine. Respondent did not establish that he was authorized to have that key.

10. One of the other students involved in the burglary, Arash Benham, had been a friend of Respondent. Respondent had tutored Benham in the past. Benham told Respondent he was under extreme pressure from his family to perform well in school. Respondent believed that Benham was depressed and likely to harm or kill himself if he did not perform well in school. Respondent helped Benham study by using an exam Benham brought, telling Respondent it was an advanced copy of a test to be given. Respondent did not admit to any other complicity or knowledge of any burglary or any other crime.

11. Respondent, Benham and at least one other student, Amir Bagherzadeh, were caught and arrested in connection with the burglary. A short time later, Benham committed suicide.

12. In February and March 1990, Respondent spoke several times with UC-Irvine ombudsman Robert Wilson concerning the events leading to his arrest and the suicide of his friend. Complainant offered the testimony of Wilson given at the preliminary hearing of the criminal charges brought against Respondent and Bagherzadeh, which occurred in December 1990.[1] Wilson testified that, on March 20, 1990, Respondent admitted that he used stolen exams for three courses that he marked on a copy of his transcript, and that he was a lookout for the burglary of an exam on February 2, 1990. Wilson asked Respondent to prepare a written statement. The statement written by Respondent did not include these admissions. Neither the marked copy of the transcript nor Respondent's written statement was offered in evidence at the present hearing.

13. Respondent denied that he cheated or used stolen exams, or that he highlighted anything on his transcript for Wilson. He also denied he told Wilson that he was a lookout for the burglary of any exam.

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[1] Respondent's objection to the use of this transcript was overruled, for reasons specifically set forth in the record.

14. The preliminary hearing testimony of Wilson also includes Respondent's statement to Wilson that Respondent was not involved in the burglary. The lack of both the marked transcript and the written statement is troubling, and, combined with the contrary statements that Wilson attributes to Respondent and Respondent's denials at hearing, makes it difficult to give substantial weight to Wilson's testimony. Wilson testified that he brought in another administrator, Michael Butler, as a witness to Respondent's statements, but Butler did not testify. Under the entire circumstances, while the preponderance of the evidence might have substantiated the allegation, it was not established, by clear and convincing evidence, that Respondent cheated on any exams while he was at UC-Irvine.

15. On December 28, 1990, a felony Information was filed against Respondent (*People v. Amir Bagherzadeh and Kambiz Beniamia Omidi*, Orange County Superior Court, case number C-83006). Respondent was charged with violating: Penal Code section 182, subdivision (1), conspiracy to commit a crime, a felony, for conspiring to commit burglary in violation of Penal Code section 459; Penal Code sections 459/460.2/461.2, general burglary, a felony; and Penal Code section 496.1, to willfully and unlawfully buy, receive, conceal, sell and withhold property, and to aid in buying, receiving, concealing, selling and withholding property, to wit: a key, a felony.

16. (A) On December 3, 1991, pursuant to a plea negotiation, Respondent withdrew his not guilty pleas and pleaded guilty to the three counts of the Information. On the motion of the prosecutor, the three counts were reduced to misdemeanors under Penal Code section 17, subdivision (b). The Court's Minute Order stated that the hearing was for "motions/change of plea/sentencing," and included that a factual basis for the plea was found and the guilty pleas were accepted. It was ordered that Respondent perform 200 hours of community service with CalTrans, and that, at the end of six months, Respondent could withdraw his guilty plea and a plea of nolo contendere was to be entered. A hearing on the balance of Respondent's sentence was set for June 26, 1992.

(B) A written waiver of constitutional rights was prepared as part of Respondent's plea negotiation. (Exhibit 54.) On page one, Respondent indicated that he intended to plead guilty to the three counts against him. In item 2, the form states: "I understand I have violated this section by (factual basis)." Respondent's attorney filled in the following: "In O.C. [Orange County], between Sept. 1989 & Feb. 1990 I conspired & agreed to commit 2° [second degree] burglary & on 02/2/90 did commit that offense in violation of P.C. § 459/460.2 / also on 02/10/90, I possessed stolen property, knowing it to be stolen. Stipulated factual basis exists." Respondent initialed this section, indicating that he understood it and agreed with it. Respondent signed the waiver form on December 3, 1991.

(C) In item 11 of the waiver form, Respondent acknowledged that he understood and agreed that the proposed sentence was that imposition of sentence

would be suspended and he would be placed on three years informal probation, with a handwritten asterisk (*) inserted on the waiver form. Probation would include payment of $100 restitution and 200 hours of community service. There is a handwritten asterisk at the bottom of the page next to the following handwritten statement:[2] "No judgment imposed for six months: if Δ [defendant] completes community service, judgment ([UNINTELLIGIBLE] re probation) to be imposed + P.C. 1203.4 relief granted on same date."

(D) Respondent had made it known to his attorneys at the time that he planned on becoming a licensed physician and that he wanted a disposition of the criminal case that would not prevent this from happening. Respondent mentioned this to his attorney Frank Ospino, who handled the preliminary hearing. Respondent then hired attorney Ronald MacGregor, who had more trial experience, when it appeared his case would go to trial. On the day the plea was negotiated, Michael Garey was Respondent's attorney of record. Respondent received advice from his attorneys that the case could be resolved in a way that the charges would be eventually dismissed.

17. In an informal conference on December 3, 1991, the Superior Court judge indicated that he would impose this indicated sentence. E. Thomas Dunn, the Deputy District Attorney who prosecuted the criminal case, wrote on the waiver form that his office was not in agreement with the proposed sentence. Dunn testified that, at that time in Orange County courts, it was not unusual for this type of plea to be arranged in misdemeanor cases in Municipal Court concerning petty offenses or drug diversion. However, for the type of charges against Respondent, Dunn characterized the arrangement as highly unusual.

18. On June 26, 1992, at the hearing on the balance of Respondent's sentence, he was again represented by Garey. The Court entered an order that: Respondent had pled guilty to the three counts as felonies; the offenses were reduced to misdemeanors under Penal Code section 17, subdivision (b); imposition of sentence was suspended and Respondent was placed on probation for three years on terms including that he perform 200 hours of community service, with a note that the community service had been completed; and that the minute order constituted "the (amended) probation order." There was no indication that any relief under Penal Code section 1203.4 was considered or granted at that time, as was contemplated in the waiver form. (See Finding 16 (C)).

19. Following Respondent's arrest after the events in February 1990, he was discharged for cause from UC-Irvine, with the condition that he could apply for re-entry only with the specific approval of the Chancellor. There was no evidence that

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[2] Although the handwriting and copy are not completely legible, testimony of a witness familiar with both the defense attorney who wrote it and his writing has assisted the Court in determining the content.

Respondent contested the discharge. Respondent considered himself as having been expelled from UC-Irvine.

20. Respondent did not use any of the 311 quarter credits he received at UC-Irvine to qualify for medical school. Instead, he began over, attending numerous community colleges and other colleges, including Golden West College, Coastline College, and California State University, Los Angeles.

21. Respondent entered medical school at St. Louis University in Missouri in August 1992, and graduated with a distinction in research in May 1996. He performed his internship in internal medicine at Loma Linda University Medical Center from July 1996 to June 1997. He had returned to southern California because of problems that arose in his father's business and a desire to be closer to his family and assist during that time.

22. While doing his internship, Respondent considered obtaining a physician's license in California and reviewed the application. In 1997, he sought legal advice concerning the questions on the application relating to his time at UC-Irvine and his convictions. He first sought advice from Garey, his criminal defense attorney. Garey informed him that the criminal charges had not been dismissed, and then prepared a petition for relief under Penal Code section 1203.4 that was signed by Respondent on February 5, 1997.

23. (A) This Petition and Order are significant in several respects. In it, Respondent declares, under penalty of perjury, that he is the defendant "who was convicted of the misdemeanor offense of violation of" various Penal Code sections "on or about 7/23/92."[3] The Petition reflects that Respondent fulfilled the terms of his probation and that he had been discharged from probation pursuant to Penal Code section 1203.3. These two representations are contradictory, and there is no other evidence that Respondent had been discharged from probation pursuant to Penal Code section 1203.3. The Petition requests that he be permitted to withdraw his plea of guilty.

(B) The Petition then states: "The granting of this order does not relieve the defendant of the obligation to disclose this conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency."

(C) The Order granting the petition was signed on April 8, 1997, and filed on April 9, 1997. Pursuant to the Order, the plea of guilty was set aside and vacated, a plea of not guilty was entered, and the complaint was dismissed.

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[3] There is no record in evidence of any court action taken on this date.

24. Respondent was unhappy that Garey had not obtained an order of dismissal in 1992, and he sought further legal advice. Respondent was referred to attorney Robert Croissant in 1997. Croissant advised Respondent that his conviction need not be reported on the license application, and that Respondent did not need to reveal his undergraduate attendance at UC-Irvine on the license application. (See Exhibits 20 and H.)

25. Croissant advised Respondent that the dismissal processed by Garey "was also still not complete." (See Respondent's declaration in Exhibit C.) Croissant prepared an Amended Petition under Penal Code section 1203.4, signed by Respondent under penalty of perjury on May 20, 1997. The Amended Petition was on the same form, and contained the same recitals, as that noted in Findings 22 and 23 above, with the change that, instead of requesting that Respondent be permitted to withdraw a plea of guilty, it requested to withdraw a plea of "nolo contendre [*sic*]." The Order granting the petition was signed on May 23, 1997, and it was filed on August 18, 1997. (Exhibit 25, p. 13.) Croissant sent a copy of this Order to Respondent, and returned other papers to him, by letter dated October 27, 1997. (Exhibit R.)

26. For reasons not explained in the record, Croissant prepared another Amended Petition under Penal Code section 1203.4, also signed by Respondent under penalty of perjury on May 20, 1997. The Petition was the same as noted in Finding 25, except that the request to withdraw the plea of "nolo contendre [*sic*]" was written slightly differently, and there is handwriting at the top stating "Duplicate Original." The Order granting the petition was signed and filed on July 10, 1997. (Exhibit 25, p. 14.)

27. In 1997, Penal Code section 1203.4 included the following provision: "The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, [or] for licensure by any state or local agency . . . ." This language has not changed to the present.

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28. There was no direct evidence of the specific language contained in the Medical Board application for licensure that Respondent had obtained and had asked Croissant to review. However, from the totality of the evidence, it is inferred that the questions on undergraduate schools attended and convictions are similar, if not identical, to questions 11 and 22 in the application Respondent eventually submitted in 2000. (Exhibit 4.) Question 22 asks whether the applicant was ever convicted of or pled nolo contendere to any violation of law. It adds the following instruction: "YOU ARE REQUIRED TO LIST ANY CONVICTION THAT HAS BEEN SET ASIDE AND DISMISSED OR EXPUNGED, OR WHERE A STAY OF EXECUTION HAS BEEN ISSUED." (Emphasis in original.)[4]

29. Pursuant to Business and Professions Code sections 480 and 490, licensing boards can deny an application for a license or suspend or revoke an existing license based on a qualifying conviction "irrespective of a subsequent order under section 1203.4 of the Penal Code."

30. When the plea negotiation was entered into on December 3, 1991, the advice received by Respondent from Garey, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect. The waiver form clearly indicated that Garey intended to return to court six months later to request relief for Respondent under Penal Code section 1203.4. Equally clearly, that code section and the standard form for the petition and order for such relief advise a defendant that he is not relieved of the obligation to disclose the conviction in response to any direct question contained in any application for licensure by a state agency. Advice given in December 1991 that Respondent would not need to reveal the conviction was incorrect for at least two reasons: first, the anticipated sentence did not allow for relief under Penal Code section 1203.4 for another six months; and second, even with such relief, the conviction must be disclosed on an application for licensure to the Board, a state agency, a requirement under both the Penal Code and the Business and Professions Code. When Garey repeated the advice to Respondent when the first Petition for relief was filed in 1997, that advice was still legally incorrect.

31. The advice received by Respondent from Croissant later in 1997, when the two later petitions for relief were submitted and the orders issued, to the effect that Respondent would not need to reveal the conviction on an application for a license to be a physician, was legally incorrect for the same reasons as set forth in Findings 27, 28, 29 and 30. Further, Croissant had reviewed the application and should have been familiar with the specific instruction to reveal convictions even after they were set aside and dismissed, or expunged.

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[4] Although the words "expunge" and "expungement" are nowhere contained in Penal Code section 1203.4, the process for relief under that section is commonly, if incorrectly, referred to as an expungement of the conviction. (*People v. Frawley* (2000) 82 Cal.App.4th 784, 791-2.)

32. After completing his internship in 1997, Respondent was accepted into a highly competitive residency in dermatology at St. Louis University. This residency lasted from July 1997 to June 2000. Respondent received a license to practice medicine in the state of Missouri in July 1997. Respondent's performance in the residency program was "exceptional," according to the associate dean of the medical school, Dr. Neal Pennys, who was also the chairman of the Dermatology Department. Respondent had the highest scores on yearly academic exams, and received honors in his third year of residency, based largely on observations of his patient interactions and practices.

33. On January 11, 2000, the Board received Respondent's application for physician and surgeon's licensure. The application included Respondent's declaration, under oath, that the information contained therein was true and correct. Question 11A of the application required Respondent to list "the names and addresses of all colleges or universities where pre-professional, postsecondary instruction was received." (Emphasis in original.) The question also required applicants to "submit official transcripts . . . for each school attended." Respondent did not list, or submit a transcript from, UC-Irvine.

34. Respondent explained that, in his view, he had been expelled from UC-Irvine and did not receive any valid credits for the classes he had completed. Respondent relied upon the advice he received from Croissant to the effect that his attendance at UC-Irvine did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing that he had attended UC-Irvine.

35. Croissant recalled reviewing the application and a letter from UC-Irvine dated April 2, 1990, concerning Respondent's suspension from UC-Irvine. This letter is not in evidence, however it is mentioned in Croissant's letter dated December 28, 2006. (Exhibit R.) Croissant relied upon Respondent's incorrect belief that he had not received valid, completed credits from UC-Irvine. Croissant did not review transcripts or seek any information from UC-Irvine before rendering his advice to Respondent. Croissant believed the question on the application required Respondent to list only schools where he had successfully completed credits.

36. Croissant's understanding of the nature of Respondent's credits earned at UC-Irvine, based almost exclusively on information provided by Respondent, was incorrect. Croissant's and Respondent's interpretation of the question on the application was also incorrect. The plain language of the question asks for a list of universities attended. As Respondent attended UC-Irvine, he should have listed it in his reply. Under all of the circumstances, Respondent's reliance on Croissant's advice on this subject was not reasonable.

37. The application also asked for information about convictions. See Finding 28 for the specific language of the question. Respondent answered "no" to that question.

38. Respondent explained that he had told Garey, his attorney, that he would agree only to an outcome in the criminal case that would result in no record, and had been told the plea negotiation would do so. Respondent also relied upon the advice he received from Croissant to the effect that his criminal case had been dismissed and did not need to be disclosed in the application. Respondent testified that he had no intent to deceive the Board by not disclosing his convictions in 1991.

39. The Board issued Respondent's license on March 24, 2000. According to Cindy Oseto, an Associate Analyst for the Board who has reviewed numerous applications and made recommendations as to whether they should be approved, denied, or investigated further, if an application contained information that an applicant had been convicted of a theft crime, further investigation would be pursued. The Board often considers disclosure of a conviction as an element of rehabilitation and may consider issuing a probationary license. However, according to Oseto, the failure to disclose a theft crime raises issues of honesty and integrity, and she would recommend either denial of that application or perhaps a conditional license. Further, she would recommend denial of an application where the applicant had not disclosed attendance at a college from which he had been dismissed for cause due to cheating or for helping another student cheat.

40. From July 2000 to January 2001, Respondent practiced with the Facey Medical Group in Mission Hills, California. Respondent opened a solo practice in February 2001 in Beverly Hills. Although there was little testimony from Respondent about the nature of his practice, this description is from an interview he had with a Board investigator on April 26, 2005. (Exhibit 22.) At that time, Respondent had six office locations: Bakersfield, Lancaster, Apple Valley, Beverly Hills, West Hills and Valencia. Bakersfield is a solo practice. In the other offices he shared space with other physicians. He employed another physician who worked at the West Hills and Lancaster locations, and two nurse practitioners and two physician assistants who rotated among some of his offices. Respondent worked at each office one day per week, except Beverly Hills, one-half day every two weeks. He had privileges at Antelope Valley and Northridge Hospitals. Respondent's practice consisted of general dermatology, as well as skin cancer treatment and cosmetic dermatology. Respondent saw about 30 – 40 patients per day. Respondent testified that he goes out of his way to communicate with his patients, and often gives patients his business card containing his personal cell phone number, and answers patients' calls at night and on weekends.

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41. A colleague, Dr. Fariborz Satey, is a pediatrician and the medical director of Heritage Health Care group in the Antelope Valley. Dr. Satey has referred patients to Respondent for six or seven years, and gets feedback from those patients that they received excellent care from Respondent. Dr. Satey receives no compensation for these referrals. When he mentioned to Respondent that it would be helpful to have a dermatologist in the Lancaster area for the convenience of patients, Respondent opened his office in Lancaster.

42. Other incidents established by the evidence are not alleged in the Second Amended Accusation but, nevertheless, provide useful information in the nature of circumstances that are aggravating, mitigating, bear on Respondent's credibility and rehabilitation, or otherwise augment the record.

43. On February 18, 1993, Respondent signed an Application for Naturalization from the Immigration and Naturalization Service (INS). In reliance on the prior advice he had received from attorneys Garey and MacGregor, confirmed by another consultation with MacGregor, Respondent answered "no" to a question that asked whether he had ever been arrested, charged, indicted or convicted for breaking or violating any law. The application was received on March 16, 1995, and Respondent was interviewed by an INS "adjudicator" on March 24, 1995. During the interview, Respondent answered "no" to questions of whether he had any arrests, expungements or convictions. Respondent was granted citizenship in 1995.

44. On March 4, 2005, an Indictment was filed against Respondent in the United States District Court for the Central District of California alleging that Respondent unlawfully procured citizenship by falsely representing on his application that he had never had an arrest, conviction or expungement. Respondent hired attorney Robert Shapiro to represent him. After Respondent and Shapiro's associate met with the Assistant U.S. Attorney and provided documents and other information concerning the convictions and the legal advice that Respondent had received, the government moved to dismiss all charges. The motion was granted by Order dated April 29, 2005.

45. (A) Respondent submitted several applications for licensure to the Department of Motor Vehicles (DMV), some of which contain possible inconsistencies. Respondent testified that he received his driver's license while he was in high school, which would have been in 1986 or before.

(B) In evidence are documents indicating that Respondent was issued a driver's license, number C5120518, on August 3, 1993, under the name Combiz Omidi. It was not established whether this was inconsistent with his statement of earlier licensure, or a license renewal.

(C) On January 23, 1997, Respondent signed, under penalty of perjury, an application for a driver's license. The application indicates it is for an original license, not a renewal or name change. The application is in the name of Julian C. Omidi. It indicates that the applicant has a license in Missouri, although Respondent testified that this part of the application is not in his handwriting. Respondent answered "no" to a question asking whether he applied under a different name within the last seven years. This application was assigned DMV number B7990414. Respondent testified that he called the DMV and cancelled this application. There was no evidence that any driver's license was issued based on this application.

(D) Respondent's current driver's license, number C5120518, was issued on May 14, 2004, in the name of Combiz Omidi, and will expire in 2008.

46. (A) In May 1997, Respondent submitted his application for licensure as a physician in Missouri. (Exhibit 42.) He certified that all statements therein were true. He answered "no" to the question if he had ever been arrested, charged, found guilty or entered a plea of nolo contendere in a criminal prosecution, whether or not sentence was imposed, including suspended imposition of sentence or suspended execution of sentence.

(B) In answer to an instruction to list all universities and colleges attended, Respondent did not include UC-Irvine. Respondent testified that he had discussed this application with Croissant in 1997, and answered these two questions based upon legal advice he received.

(C) The application asked for Respondent to list his activities since graduation from high school, and to account for all dates to the present. For the period 7/86 through 5/90, Respondent wrote that he was vice president of his father's building and engineering corporation, with duties as building and engineering manager and construction site supervisor. He added that the company closed as of his father's death in August 1986. Respondent wrote that, for the period 10/86 through 8/87, he was a part-time night medical transcriptionist [*sic*], and from 2/88 to "the present," that is, May 1997, he was a part-time free lance computer database programmer and networking consultant.

(D) Respondent did not include UC-Irvine in this list of activities since high school graduation.

(E) Respondent's testimony about his lack of other activities during his attendance at UC-Irvine (Finding 5) is in direct contrast, and incompatible, with his list of activities in this application.

47. In February 2002, Respondent submitted an application for renewal of his medical license in Missouri. He certified that all statements therein were true. He answered "no" to the question if he had ever been arrested, charged, found guilty or

entered a plea of nolo contendere in a criminal prosecution, whether or not sentence was imposed, including suspended imposition of sentence or suspended execution of sentence. Respondent testified that, as there had been no change in circumstance since the events and advice he received in 1997, he was relying on legal advice in making this answer.

48. (A) In about September 2006, Respondent consulted with attorney C. David Haigh. Haigh was very familiar with Garey, as they had both been deputy public defenders together and had practiced together in the past. On Respondent's behalf, Haigh filed a motion for the criminal case to be dismissed under Penal Code section 1385, and for the dismissal to be made *nunc pro tunc* as of June 26, 1992. The motion was supported by a declaration of Respondent (Exhibit C, pages 6 – 8), in which he explained some of the events and the legal advice he had received.

(B) The motion was granted on November 30, 2006, by Orange County Superior Court Judge Ronald Owen, the same judge who presided over the proceedings against Respondent on December 3, 1991, and June 26, 1992. An Order was filed that same date whereby Respondent withdrew his plea of guilty/nolo contendere, the matter was dismissed pursuant to penal Code section 1385, and the order was to be effective *nunc pro tunc* as of June 26, 1992.

49. (A) Respondent contends that the acts that occurred in his criminal case amounted to a deferred entry of judgment and that, as of the time he submitted his application, he had not suffered a conviction.

(B) The contention that Respondent had not suffered a conviction at the time of his Board application in 2000 is rejected. "Conviction does not mean the judgment based upon the verdict, but it is the verdict itself. It is the ascertainment of guilt by the trial court . . . . A person has been convicted even though the judgment should be suspended during appeal or while the convict is on probation. . . . A judgment though not final may be proved for any purpose for which it is effectual." (Citations omitted.) (*People v. Clapp* (1944) 67 Cal.App.2d 197, 200.) Further, for purposes of imposing discipline against a license issued by a state agency for conviction of a crime, a conviction occurs when there is a determination of guilt upon the defendant entering a plea of guilty to a felony. (*Ready v. Grady* (1966) 243 Cal.App.2d 113.) Respondent was convicted as of the court proceedings on December 3, 1991, and June 26, 1992. Although Respondent can now state that he was never convicted, that state of affairs only occurred as of the court's dismissal order of November 30, 2006.

(C) The contention that there was a deferred entry of judgment, and that some sort of diversion was ordered, is factually incorrect. On December 3, 1991, as set forth in the Minute Order of the court, Respondent's guilty plea was accepted by the Court and the Court found a factual basis for the plea. The Court imposed sentence, but also ordered that the balance of the sentence would be given in six

months. This Minute Order reflects the official action of the Court, and any inconsistency in the waiver form would not control over the Order of the Court.

(D) Further, the waiver form says nothing from which it can be inferred that a diversion was contemplated. Under diversion for drug offenders, as found in Penal Code section 1000 et seq., successful completion of the drug diversion program may result in an order to the effect that the charges are dismissed as if they had never been brought. What occurred here, rather, is that the waiver form specifically mentioned the possibility that, after six months, Respondent might have a judgment of probation imposed and be allowed to receive the benefits of a dismissal order under Penal Code section 1203.4. As noted above (Finding 27), that section never anticipated that a person could deny the existence of the conviction when seeking a license from a state agency, or in other circumstances not relevant here. A dismissal under Penal Code section 1203.4 is, therefore, conditional. (*People v. Frawley, supra*, 82 Cal.App.4th 784.)

(E) These contentions of Respondent are rejected as being contrary to the law and the facts, as set forth above.

50. Complainant contends that the dismissal order under Penal Code section 1385 entered in November 2006 is void, for several technical, procedural and substantive reasons. This Administrative Court does not have the authority or jurisdiction to reach such a conclusion. (*DeRasmo v. Smith* (1971) 15 Cal.App.3d 601.)

LEGAL CONCLUSIONS AND DISCUSSION

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal; "so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted – but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability." (*Meiner* v. *Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of

the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

The testimony of "one credible witness may constitute substantial evidence" including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

"[T]he weight to be given to the opinion of an expert depends on the reasons he assigns to support that opinion." (Citation); its value "'rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion. . . .'" (Citation.) Such an opinion is no better than the reasons given for it (Citation), and if it is "not based upon facts otherwise proved, or assumes facts contrary to the only proof, it cannot rise to the dignity of substantial evidence. (Citations.)" (*White v. State of California* (1971) 21 Cal.App.3d 738, 759-760.)

"[T]he rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. 'Disbelief does not create affirmative evidence to the contrary of that which is discarded. 'The fact that the jury may disbelieve the testimony of a witness who testifies to the negative of an issue, does not of itself furnish any evidence in support of the affirmative of that issue and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative'.'" (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632, citing *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

3. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code[5] section 2235, authorizing disciplinary action where a license is obtained by fraud or misrepresentation, for two instances wherein Respondent misrepresented information in his license application, one of which also amounts to an instance of fraud. See Factual Findings 2, 6, 9, 10, 11, 15 through 31, 33 through 39, and 42 through 48.

4. (A) There was insufficient evidence that Respondent intended to deceive the Board by failing to disclose his convictions. The nature of his criminal proceedings and convictions was complicated and beyond the experience of a layperson, and it was reasonable to seek legal advice. Respondent reasonably relied upon the legal advice he received, even though, as set forth in Factual Findings 30

[5] All further statutory references are to the Business and Professions Code, except where indicated.

and 31, it is determined that such advice was incorrect. Due to this lack of intent, it cannot be concluded that Respondent perpetrated a fraud on the Board concerning failure to disclose the convictions.

(B) However, Respondent's intent is irrelevant to the determination that Respondent obtained his license by misrepresentations in his application. The danger is in falsely certifying facts which are not true, as opposed to any intent to do evil. This is "regardless of the intent of the doctor signing the certificate." (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 556.)

(C) The duty to make a full disclosure in an application for a professional license is an absolute duty. Justification for a failure to perform that duty is not found in the excuse that the applicant was advised by some person, no matter how high in official position that person might stand, that disclosure is not necessary. Whether a failure to disclose is caused by intentional concealment, reckless disregard for the truth or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks integrity and/or intellectual discernment required of a professional. (See, *In re Gehring* (1943) 22 Cal.2d 708.)

(D) Respondent's reliance upon legal advice concerning disclosure of his attendance at UC-Irvine was not reasonable. The language of the application was clear and unequivocal. He was required to list all colleges attended and to attach transcripts. Respondent's belief that he did not have valid credits from UC-Irvine is an unsupported conclusion and without reason, and it does not appear in the evidence that Respondent or Croissant did anything to verify this unreasonable conclusion. Respondent's claim that he did not intend to deceive the Board by not disclosing his attendance at UC-Irvine is not credible and is rejected. It is determined that Respondent intended such deceit and, therefore, perpetrated a fraud on the Board.

(E) Complainant established that Respondent's misrepresentations and fraud were material, in that his license application may have been treated differently had he made full disclosure. (See, *DeRasmo v. Smith, supra,* 15 Cal.App.3d 601.)

5. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, subdivision (e), for dishonesty. See Factual Findings 2, 6, 9, 10, 11, 15 through 31, 33 through 39, and 42 through 48.

6. (A) Neither party submitted any statutes, case law or argument to assist the court in determining to what extent, if any, Respondent's intent bears upon determining whether he committed "dishonesty" in failing to disclose his convictions or attendance at UC-Irvine. Dishonesty is a basis on which public employees may be discharged under Government Code section 19572, subdivision (f), and cases interpreting and applying that section are a useful reference.

(B) As set forth in *Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-19: "'Dishonesty' connotes a disposition to deceive. (Citation.) It 'denotes an absence of integrity; a disposition to cheat, deceive or defraud; . . .' (*Hogg v. Real Estate Comr.*, 54 Cal.App.2d 712, 717 [129 P.2d 709].)" Although the element of intent is discussed in the case of *Cvrcek v. State Personnel Bd.* (1967) 247 Cal.App.2d 827, it is in the nature of confirming that the trial court has discretion in making the determination of whether dishonesty has occurred, and the trial court is empowered to evaluate the evidence of lack of intent.

(C) The definitions of "dishonest" and "dishonesty" (Webster's Seventh New Collegiate Dict. (1969) p. 239), include references to willfulness, intent and fraud such that it may be reasonably concluded that there can be no dishonesty where there is no intent to deceive. As noted above, it is determined that Respondent intended to deceive the Board by failing to disclose his attendance at UC-Irvine. Such deceit constitutes dishonesty.

7. Cause exists to suspend or revoke Respondent's license pursuant to section 2234, for unprofessional conduct, and section 2261, which defines unprofessional conduct as including "knowingly" signing a document which falsely represents the existence or nonexistence of a state of facts. See Factual Findings 2, 6, 9, 10, 11, 15 through 31, 33 through 39, and 42 through 48.

8. As noted above, Respondent's failure to disclose his attendance at UC-Irvine was intentional and fraudulent. His misrepresentation concerning his convictions, even though not made with intent to deceive, nevertheless is grounds for discipline under this code section. Intent is not required for discipline to be imposed under this code section. As stated in *Brown v. State Department of Health, supra*, 86 Cal.App.3d at 555-556:

"[W]e hold that 'knowingly' to make or sign a certificate which 'falsely represents' a state of facts, a person need only have knowledge of the falsity of the facts certified when making or signing the certificate. Our interpretation is not only in accord with statutory and decisional definitions, but will best protect the public. Factual certifications by medical doctors are used extensively throughout society for many and varied purposes. A false medical certification, regardless of the doctor's intent, may be put to great mischief. The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true. . . .

"Nor do we find appellant's argument to be persuasive that the use of the words 'falsely represents' requires a finding of intent to deceive. In the absence of express language, intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. (Citation.) The revocation or suspension of a license is not penal, the Legislature has

provided for suspension to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity. (Citations.) The potential of harm from the existence of a false medical certificate, regardless of the intent of the doctor signing the certificate, requires that doctors refrain from signing false certificates."

9. Cause exists to suspend or revoke Respondent's license pursuant to sections 480, subdivision (a) and 2234, subdivision (f), for actions or conduct that would have warranted denial of his application for licensure. See Factual Findings 2, 6, 9, 10, 11, 15 through 31, 33 through 39, and 42 through 48.

10. Cause exists to suspend or revoke Respondent's license pursuant to section 2236, for conviction of a crime substantially related to the qualifications, functions or duties of a licensee. See Factual Findings 2, 9, 10, 11, 15 through 18, 22 through 31, 37 through 39, and 42 through 48.

11. (A) The determination that the crimes are substantially related is based upon the holdings in *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461 and *Krain v. Medical Bd.* (1999) 71 Cal.App.4th 1416. In *Windham*, the doctor had been convicted of tax fraud. The Court of Appeal rejected his argument that the conviction was not substantially related to the practice of medicine. "First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of $65,000 in taxes may yet be considered honest in his dealings with his patients." *Windham v. Board of Medical Quality Assurance*, *supra* at p. 470.

(B) Krain's conviction for solicitation of subornation of perjury involved dishonesty. "We agree with the reasoning of Windham: the intentional solicitation to commit a crime which has as its hallmark an act of dishonesty cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third party entities and payors who act on behalf of patients. (*Windham*, *supra*, 104 Cal. App. 3d at p. 470; see also *Matanky v. Board of Medical Examiners* (1978) 79 Cal. App. 3d 293, 305-306 [144 Cal. Rptr. 826].) Krain's plea of guilty to solicitation of subornation of perjury is substantially related to his qualifications as a physician." (*Krain v. Medical Bd.*, *supra*, 71 Cal.App.4th at pp. 1424-1425.)

12. The Board publishes guidelines for the use of Administrative Law Judges in determining the appropriate range of outcomes for statutory violations, referred to in California Code of Regulations, title 16, section 1361, and entitled "Manual of Disciplinary Orders and Disciplinary Guidelines" (9th Edition, 2003). These Guidelines acknowledge that they are not binding standards and that mitigating or other appropriate circumstances may establish a basis to vary from them.

For the violations of sections 2234, 2236 and 2261 found herein, the Guidelines recommend a maximum penalty of license revocation, and minimum penalties of stayed revocation and five or seven years probation on various terms including suspension, coursework, evaluation, monitoring and therapy.

13. On the one hand, Respondent presented convincing evidence that some of the acts that constitute violations of law resulted from his reasonable reliance on legal advice. That the advice was incorrect was not known to Respondent.

14. On the other hand, Respondent intentionally deceived the Board in failing to disclose his attendance at UC-Irvine, most likely in an attempt to prevent the Board from learning that he had been discharged for cause and the reasons therefore – that is, the convictions. The dismissal of the criminal charges in 2006 offers little assistance to Respondent in these proceedings. While he is now able to correctly assert that he was not convicted, that was not the state of affairs when he applied for his license in 2000. The entirety of the record reveals that Respondent has a penchant for dishonesty, to bend his position and shade his statements to suit his needs, without consistent regard for the truth. His application for his physician's license in Missouri is completely at odds with his testimony concerning his activities from 1986 to 1990, in a clear attempt to deceive the licensing authorities in Missouri or to deceive this Administrative Court. Similarly, Respondent was willing to acknowledge the factual bases for his plea negotiation in 1991 but, at this hearing, denied any complicity in illegal acts. Respondent is not entitled to any benefit of the doubt – there is no doubt. His misrepresentations and dishonesty, occurring as they did in the process of obtaining his licenses, go to the core of his ability to practice his profession.

Under all of the circumstances herein, the health, safety and welfare of the people of the State of California can be protected only by a disciplinary order that revokes Respondent's license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician and Surgeon Certificate number A71181 issued to Respondent C. Julian Omidi, M.D., is revoked pursuant to Legal Conclusions 1 through 14, separately and for all of them.

DATED: September 4, 2007.

David Rosenman

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings