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

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

23 v.

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

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

**FIRST AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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

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**INTRODUCTION**

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

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

1 **JURISDICTION AND VENUE**

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

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

10 **PARTIES**

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

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

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

24 8. Defendant Randy W. Hawkins is the President of the Medical Board  
25 of California, which is responsible for regulating and licensing the practice of  
26 medicine in California, including enforcing the Medical Practice Act, Cal. Bus. &  
27 Prof. Code § 2000, *et seq.* Mr. Hawkins is sued in his official capacity.



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

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

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

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

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

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

28



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

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

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

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

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

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

#### 19 *Azadeh Khatibi*

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

17 *Marilyn M. Singleton*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 *Do No Harm*

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

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

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

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

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

23 **CAUSES OF ACTION**

24 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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





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

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

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

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

9 DATED: December 22, 2023.

10 Respectfully submitted,

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