

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:

Ashutosh Ron Virmani M.D.,

Respondent/Counter-Petitioner.

)
) **RESPONSE TO NOTICE OF**
) **CHARGES AND REQUEST FOR**
) **DECLARATORY RULING**
)

Respondent/Counter-Petitioner Ashutosh Ron Virmani ("Dr. Virmani" or "Respondent") hereby responds to the Notice of Charges and Allegations ("Notice of Charges") as follows:

FIRST DEFENSE

The Notice of Charges fails to state a claim upon which relief can be granted and therefore must be dismissed pursuant to N.C. R. Civ. P. 12(b)(6). The factual and legal basis for dismissal is set forth more fully in Respondent's Request for Declaratory Ruling set forth below, and is incorporated herein by reference.

SECOND DEFENSE AND RESPONSE TO SPECIFIC CHARGES

1. Dr. Virmani admits the allegations set forth in paragraph 1.
2. Dr. Virmani admits the allegations set forth in paragraph 2.
3. Dr. Virmani admits the allegations set forth in paragraph 3.
4. Dr. Virmani admits the allegations set forth in paragraph 4.
5. Dr. Virmani denies the allegations set forth in paragraph 5.
6. Dr. Virmani denies the allegations set forth in paragraph 6.
7. Dr. Virmani denies the allegations set forth in paragraph 7.
8. Dr. Virmani denies the allegations set forth in paragraph 8.
9. Dr. Virmani denies making any remarks reflecting any racial animus. Dr. Virmani

further states that while he made comments that were intended to be sarcastic, he accepts that they were offensive, and he apologized for them.

10. Dr. Virmani admits that he used appropriate amounts of lidocaine for patients based on his training and experience, but denies administering or withholding lidocaine on the basis of any patient's race. Dr. Virmani also admits that he drew a picture of a uterus and cervix for educational purposes. Dr. Virmani denies using offensive language to explain female genitalia. Dr. Virmani denies the remaining allegations set forth in paragraph 10.

11. Dr. Virmani denies making any inappropriate remarks to patients.

12. Dr. Virmani denies the allegations set forth in paragraph 12.

13. Dr. Virmani denies the allegations set forth in paragraph 13.

14. Dr. Virmani denies the allegations set forth in paragraph 14.

15. Dr. Virmani denies the allegations set forth in paragraph 15.

16. Dr. Virmani denies the allegations set forth in paragraph 16.

17. Dr. Virmani denies the allegations set forth in paragraph 17.

18. Dr. Virmani denies the allegations set forth in paragraph 18.

19. Dr. Virmani denies the allegations set forth in paragraph 19.

20. The allegations set forth in paragraph 20 contain legal conclusions to which no response is required, and to the extent any response is required, Dr. Virmani denies the allegations set forth in paragraph 20.

21. The allegations set forth in paragraph 21 contain legal conclusions to which no response is required, and to the extent any response is required, Dr. Virmani denies the allegations set forth in paragraph 21.

22. The allegations set forth in paragraph 22 contain legal conclusions to which no

response is required, and to the extent any response is required, Dr. Virmani denies the allegations set forth in paragraph 22.

REQUEST FOR DECLARATORY RULING

Pursuant to N.C. R. Civ. P. 13 and 21 NCAC 32A.0111, Dr. Virmani brings this action for a declaratory ruling and states the following:

PRELIMINARY STATEMENT

1. This is an action brought by Dr. Virmani concerning the excessively prolonged and constantly evolving investigation of him by the staff of the North Carolina Medical Board (the "Board").

2. Through this request for a declaratory ruling, Dr. Virmani seeks to terminate the instant prosecution of him.

3. Dr. Virmani further brings this request for declaratory ruling in this forum to exhaust any and all administrative remedies that might be available to him so that he may vindicate his procedural and substantive due process rights.

JURISDICTION

4. The Board has jurisdiction to hear this matter pursuant to the declaratory ruling authority conferred upon it by 21 NCAC 32A.0111.

PARTIES

5. Dr. Virmani is a physician licensed by the Board on or about December 2, 1989, license number 38567. He resides at 4626 Charlestowne Manor Drive, Charlotte, North Carolina 28211.

6. The Board is a body duly organized under the laws of North Carolina and is the proper party to issue declaratory rulings under the authority granted to it in 21 NCAC 32A.0111

and Article 1 of Chapter 90 of the North Carolina General Statutes.

STATEMENT OF FACTS

7. Dr. Virmani is an Indian-born physician who has been a naturalized citizen of the United States since 1987. He received all of his medical education and training in the United States. At all times relevant herein, Dr. Virmani practiced medicine in Charlotte, and occasionally worked in Raleigh.

8. Until recently, Dr. Virmani provided healthcare exclusively to women patients at A Preferred Women's Health Center ("APWHC") in Charlotte and occasionally Raleigh. He has been continually board certified in Obstetrics and Gynecology since 1991. He has served North Carolina patients for 32 years.

9. On or about July 2, 2019, [REDACTED], a competitor, filed a handwritten complaint against Dr. Virmani with the Board alleging, among other things, that Dr. Virmani:

- a. Treated some patients who sought to terminate their pregnancies without providing local anesthesia;
- b. Improperly managed an ectopic pregnancy;
- c. "[M]istreats people of color, except Indians as this is his nationality";
- d. Is verbally inappropriate with some patients and inappropriately disrobes them; and
- e. Boasts about performing abortions on patients when other providers decline to do so due to their clinical concerns.

Other than the unsubstantiated allegations made by [REDACTED] Dr. Virmani is not aware of any patient complaints or medically adverse outcomes for his former patients.

10. Upon information and belief, [REDACTED] did not have personal knowledge of any of the matters set forth in her complaint at the time that she filed it, and at best, each of her allegations is based upon hearsay. She has never worked with, observed, or supervised Dr.

Virmani in any capacity.

11. Nonetheless, because [REDACTED]'s complaint triggered the Board's investigation of Dr. Virmani, on or about November 14, 2019, Dr. Virmani, with counsel, met with the Board's investigator.

12. Following that meeting, on or about June 15, 2020, Dr. Virmani, through counsel, provided the following:

- a. Affidavits from Drs. [REDACTED] and [REDACTED]. Notwithstanding [REDACTED]'s reference to Drs. [REDACTED] and [REDACTED] in her complaint, both of them have completely refuted [REDACTED]'s allegations.
- b. Affidavits and/or statements from [REDACTED] and [REDACTED], two of whom are licensed Registered Nurses. Collectively, they have worked with Dr. Virmani for more than twenty years, and all of them have opined, from their formal medical training, that Dr. Virmani's medical skills and demeanor with patients was "above reproach." Moreover, each of them has stated that they would refer a friend or patient to him for medical services.
- c. Affidavits of Drs. [REDACTED], all of whom have opined that Dr. Virmani has complied with the medical standard of care in charts that the Board investigator has identified as "problematic."
- d. An article regarding the use of a paracervical block in performing abortions.
- e. A letter authored by Dr. [REDACTED] in 2014 regarding Dr. Virmani's attendance at a course in Medical Record Keeping, and describing Dr. Virmani as "an astute clinician with excellent grasp of the fundamentals of medical record keeping." The letter goes on to state that Dr. Virmani "is a highly efficient, energetic, disciplined and organized individual." The course had been approved by this Board.

13. Notwithstanding Dr. Virmani's comprehensive responses to each and every one of the Board's concerns, the Board, through its counsel and staff, have unreasonably continued its meandering investigation of Dr. Virmani. On or about December 30, 2020, the Board, through

its counsel, provided a draft Notice of Allegations raising additional grounds for discipline.

14. On April 5, 2021, in response to new allegations, Dr. Virmani, through counsel, provided a detailed history of the Board's investigation and explained why it should be terminated. The Board's legal staff specifically stated that the April 5, 2021, letter would not be shared with the Board.

15. Additionally, Dr. Virmani filed an official complaint with the Board against [REDACTED] on February 16, 2021, regarding her misrepresentations to the Board concerning the allegations set forth in her complaint, which were refuted by the affidavits and other evidence provided to the Board's staff. This complaint by Dr. Virmani was summarily dismissed by the Board's legal staff, which stated that it would not open an investigation.

16. After twenty-two months of a meandering investigation, the Board failed to bring formal charges against Dr. Virmani within six months or explain why its investigation has been extended, as required by N.C. Gen. Stat. § 90-14(l). Nonetheless, based upon the Board's decision to convene a precharge hearing on March 15, 2021, upon information and belief and by operation of N.C. Gen. Stat. § 90-14(l), it made "a decision to initiate public disciplinary proceedings[.]" despite not having any legitimate basis to do so.

17. Even more, despite substantial communication between the parties through their respective counsel, Dr. Virmani was not made aware of any issue concerning Patients D, E, and/or F, as alleged in paragraphs 17 through 19 of the Notice of Charges, until he was served with the Notice of Charges. This is further evidence of the failure of the Board and its staff to afford Dr. Virmani any opportunity to respond to any concerns prior to the initiation of disciplinary action.

18. The Board's unreasonably prolonged investigation of Dr. Virmani has had an

extremely adverse impact on him, including, but not necessarily limited to, his loss of employment, loss of substantial income, significant legal fees, loss of an ability to seek licensure in another state, and reputational harm.

CLAIM FOR DECLARATORY RULING

19. N.C. Gen. Stat. § 90-14(i)(iv)-(v) states that a licensee under investigation:

(iv) has a duty to respond to inquiries from the Board concerning any matter affecting the license, and all information supplied to the Board and its staff will be considered by the Board in making a determination with regard to the matter under investigation; (v) that the Board will complete its investigation within six months or provide an explanation as to why it must be extended; and (vi) that if the Board makes a decision to initiate public disciplinary proceedings, the licensee may request in writing an informal nonpublic precharge conference.

20. By refusing to consider the substantial and overwhelming evidence that Dr. Virmani has provided to the Board, through its counsel and investigator, the Board and its staff have failed to meet their obligations under § 90-14(iv).

21. By conducting a meandering investigation that has lasted at least twenty-two months, but not explaining why the investigation must be extended, the Board and its staff have failed to meet their obligation under §90-14(v).

WHEREFORE, based upon the allegations set forth herein, Dr. Virmani requests a declaratory ruling as follows:

- a. The disciplinary process as set forth in N.C. Gen. Stat. § 90-14(i) has not been followed;
- b. Based upon the failure of the Board and its staff to follow the strict dictates of § 90-14(i), the Board must dismiss the Notice of Charges and terminate its investigation of Dr. Virmani with respect to the matters alleged therein.

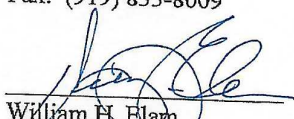
Date: June 23, 2021

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I, the undersigned attorney for Dr. Ashutosh Ron Virmani, hereby certify that I have served a copy of the foregoing Response to Notice of Charges and Request for Declaratory Ruling on counsel of record for the North Carolina Medical Board by electronic mail to the following:

Marcus Jimison
Senior Board Attorney
North Carolina Medical Board
P.O. Box 20007
Raleigh, North Carolina 27619-0007



Daniel T. Blue, Jr.