

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

In the Matter of the Accusation
Against:

File No. 08-2007-185976

TOMAS BALLESTEROS RIOS, M.D.

Physician's and Surgeon's
Certificate No. A 54078

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 15, 2011.

DATED May 27, 2011

MEDICAL BOARD OF CALIFORNIA



Hedy Chang
Chair, Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 08-2007-185976

12 TOMAS BALLESTEROS RIOS, M.D.
9807 Lightner Way
13 Bakersfield, California 93311

OAH No. 2010090571

14 Physician's and Surgeon's Certificate
15 No. A54078

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.
17

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

25 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
26 California. She brought this action solely in her official capacity and is represented in this matter
27 by Kamala D. Harris, Attorney General of the State of California, by Beneth A. Browne, Deputy
28 Attorney General.

1 2. Respondent Tomas Ballesteros Rios, M.D. (Respondent) is represented in this
2 proceeding by attorney Roger S. Bonakdar, whose address is: 2445 Capitol Street, Suite 150,
3 Fresno, CA 93721

4 3. On or about March 29, 1995, the Medical Board of California issued Physician's and
5 Surgeon's Certificate No. A54078 to Tomas Ballesteros Rios, M.D. (Respondent). The
6 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
7 charges brought in Accusation No. 08-2007-185976 and will expire on December 31, 2010,
8 unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 08-2007-185976 was filed before the Medical Board of California
11 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
12 Accusation and all other statutorily required documents were properly served on Respondent on
13 August 17, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A
14 copy of Accusation No. 08-2007-185976 is attached as Exhibit A and incorporated herein by
15 reference.

16 **ADVISEMENT AND WAIVERS**

17 5. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 08-2007-185976. Respondent has also carefully read,
19 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
20 Disciplinary Order.

21 6. Respondent is fully aware of his legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
23 his own expense; the right to confront and cross-examine the witnesses against him; the right to
24 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
25 the attendance of witnesses and the production of documents; the right to reconsideration and
26 court review of an adverse decision; and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.
28

1 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 **CULPABILITY**

4 8. Respondent admits the truth of the allegations in the first cause for discipline in
5 Accusation No. 08-2007-185976.

6 9. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
7 discipline and he agrees to be bound by the Medical Board of California (Board)'s imposition of
8 discipline as set forth in the Disciplinary Order below.

9 **CONTINGENCY**

10 10. This stipulation shall be subject to approval by the Medical Board of California.
11 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
12 Board of California may communicate directly with the Board regarding this stipulation and
13 settlement, without notice to or participation by Respondent or his counsel. By signing the
14 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
15 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
16 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
17 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
18 action between the parties, and the Board shall not be disqualified from further action by having
19 considered this matter.

20 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
21 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
22 effect as the originals.

23 12. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 **DISCIPLINARY ORDER**

27 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A54078 issued
28 to Respondent Tomas Ballesteros Rios, M.D. (Respondent) is revoked. However, the revocation

1 is stayed and Respondent is placed on probation for three (3) years on the following terms and
2 conditions.

3 1. ACTUAL SUSPENSION As part of probation, respondent is suspended from the
4 practice of medicine for 60 days beginning June 16, 2011.

5 2. ETHICS COURSE Within 60 calendar days of the effective date of this Decision,
6 respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the
7 Division or its designee. Failure to successfully complete the course during the first year of
8 probation is a violation of probation.

9 An ethics course taken after the acts that gave rise to the charges in the Accusation, but
10 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,
11 be accepted towards the fulfillment of this condition if the course would have been approved by
12 the Board or its designee had the course been taken after the effective date of this Decision.

13 Respondent shall submit a certification of successful completion to the Board or its
14 designee not later than 15 calendar days after successfully completing the course, or not later than
15 15 calendar days after the effective date of the Decision, whichever is later.

16 3. MONITORING - PRACTICE/BILLING Respondent's current practice does not
17 include duties with respect to billing, and as such, no billing monitor shall be required. However,
18 if Respondent changes his current practice to include any duties with respect to billing, then at
19 least 30 calendar days prior to such change, Respondent shall advise the Board and submit to the
20 Board or its designee for prior approval as a billing monitor, the name and qualifications of one or
21 more licensed physicians and surgeons whose licenses are valid and in good standing, and who
22 are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have
23 no prior or current business or personal relationship with respondent, or other relationship that
24 could reasonably be expected to compromise the ability of the monitor to render fair and unbiased
25 reports to the Board, including, but not limited to, any form of bartering, shall be in respondent's
26 field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all
27 monitoring costs.
28

1 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
2 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
3 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
4 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
5 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
6 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
7 signed statement.

8 If Respondent has a billing monitor pursuant to this provision, respondent's billing shall be
9 monitored by the approved monitor. Respondent shall make all records available for immediate
10 inspection and copying on the premises by the monitor at all times during business hours, and
11 shall retain the records for the entire term of probation.

12 The monitor(s) shall submit a quarterly written report to the Board or its designee which
13 includes an evaluation of respondent's performance, indicating whether respondent's practices are
14 within the standards of practice of medicine or billing, or both, and whether respondent is
15 practicing medicine safely, billing appropriately or both.

16 It shall be the sole responsibility of respondent to ensure that the monitor submits the
17 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
18 preceding quarter.

19 If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of
20 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
21 name and qualifications of a replacement monitor who will be assuming that responsibility within
22 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days
23 of the resignation or unavailability of the monitor, respondent shall be suspended from the
24 practice of medicine until a replacement monitor is approved and prepared to assume immediate
25 monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar
26 days after being so notified by the Board or designee.

27 Failure to maintain all records, or to make all appropriate records available for immediate
28 inspection and copying on the premises, or to comply with this condition as outlined above is a

1 violation of probation.

2 4. NOTIFICATION Prior to engaging in the practice of medicine, the respondent shall
3 provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief
4 Executive Officer at every hospital where privileges or membership are extended to respondent,
5 at any other facility where respondent engages in the practice of medicine, including all physician
6 and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every
7 insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall
8 submit proof of compliance to the Board or its designee within 15 calendar days.

9 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10 5. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, respondent is
11 prohibited from supervising physician assistants.

12 6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules
13 governing the practice of medicine in California, and remain in full compliance with any court
14 ordered criminal probation, payments and other orders.

15 7. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations
16 under penalty of perjury on forms provided by the Board, stating whether there has been
17 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
18 not later than 10 calendar days after the end of the preceding quarter.

19 8. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's
20 probation unit. Respondent shall, at all times, keep the Board informed of respondent's business
21 and residence addresses. Changes of such addresses shall be immediately communicated in
22 writing to the Board or its designee. Under no circumstances shall a post office box serve as an
23 address of record, except as allowed by Business and Professions Code section 2021(b).

24 Respondent shall not engage in the practice of medicine in respondent's place of residence.
25 Respondent shall maintain a current and renewed California physician's and surgeon's license

26 Respondent shall immediately inform the Board, or its designee, in writing, of travel to any
27 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30
28 calendar days.

1 9. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent shall be
2 available in person for interviews either at respondent's place of business or at the probation unit
3 office, with the Board or its designee, upon request at various intervals, and either with or without
4 prior notice throughout the term of probation.

5 10. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent should
6 leave the State of California to reside or to practice, respondent shall notify the Division or its
7 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
8 defined as any period of time exceeding 30 calendar days in which respondent is not engaging in
9 any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

10 All time spent in an intensive training program outside the State of California which has
11 been approved by the Board or its designee shall be considered as time spent in the practice of
12 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
13 period of non-practice. Periods of temporary or permanent residence or practice outside
14 California will not apply to the reduction of the probationary term. Periods of temporary or
15 permanent residence or practice outside California will relieve respondent of the responsibility to
16 comply with the probationary terms and conditions with the exception of this condition and the
17 following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and
18 Cost Recovery.

19 Respondent's license shall be automatically cancelled if respondent's periods of temporary
20 or permanent residence or practice outside California total two years. However, respondent's
21 license shall not be cancelled as long as respondent is residing and practicing medicine in another
22 state of the United States and is on active probation with the medical licensing authority of that
23 state, in which case the two year period shall begin on the date probation is completed or
24 terminated in that state.

25 11. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

26 In the event respondent resides in the State of California and for any reason respondent
27 stops practicing medicine in California, respondent shall notify the Board or its designee in
28 writing within 30 calendar days prior to the dates of non-practice and return to practice. Any

1 period of non-practice within California, as defined in this condition, will not apply to the
2 reduction of the probationary term and does not relieve respondent of the responsibility to comply
3 with the terms and conditions of probation. Non-practice is defined as any period of time
4 exceeding 30 calendar days in which respondent is not engaging in any activities defined in
5 sections 2051 and 2052 of the Business and Professions Code.

6 All time spent in an intensive training program which has been approved by the Board or its
7 designee shall be considered time spent in the practice of medicine. For purposes of this
8 condition, non-practice due to a Board-ordered suspension or in compliance with any other
9 condition of probation, shall not be considered a period of non-practice.

10 Respondent's license shall be automatically cancelled if respondent resides in California
11 and for a total of two years, fails to engage in California in any of the activities described in
12 Business and Professions Code sections 2051 and 2052.

13 12. COMPLETION OF PROBATION Respondent shall comply with all financial
14 obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior
15 to the completion of probation. Upon successful completion of probation, respondent's certificate
16 shall be fully restored.

17 13. VIOLATION OF PROBATION Failure to fully comply with any term or condition
18 of probation is a violation of probation. If respondent violates probation in any respect, the
19 Board, after giving respondent notice and the opportunity to be heard, may revoke probation and
20 carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation,
21 or an Interim Suspension Order is filed against respondent during probation, the Board shall have
22 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
23 the matter is final.

24 14. LICENSE SURRENDER Following the effective date of this Decision, if
25 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the
26 terms and conditions of probation, respondent may request the voluntary surrender of
27 respondent's license. The Board reserves the right to evaluate respondent's request and to
28 exercise its discretion whether or not to grant the request, or to take any other action deemed

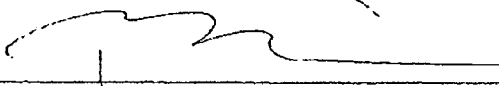
appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, but may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Roger S. Bonakdar, I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/16/2011


TOMAS BALLESTEROS RIOS, M.D.
Respondent

I have read and fully discussed with Respondent Tomas Ballesteros Rios, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/16/11


ROGER S. BONAKDAR
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: March 16, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Beneth A Browne

BENETH A. BROWNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 08-2007-185976

1 EDMUND G. BROWN JR.
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 17 2006
BY [Signature] ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 08-2007-185976

13 TOMAS BALLESTEROS RIOS, M.D.
14 9807 Lightner Way
Bakersfield, CA 93311

ACCUSATION

15 Physician's and Surgeon's Certificate
No. A54078

Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

22 2. On or about March 29, 1995, the Medical Board of California issued Physician's and
23 Surgeon's Certificate Number A54078 to Tomas Ballesteros Rios, M.D. (Respondent). The
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on December 31, 2010, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division¹ deems proper.

5. Section 2229 of the Code states, in subdivision (a):

"Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
2 after the conviction, transmit a certified copy of the record of conviction to the board. The
3 division may inquire into the circumstances surrounding the commission of a crime in order to fix
4 the degree of discipline or to determine if the conviction is of an offense substantially related to
5 the qualifications, functions, or duties of a physician and surgeon.

6 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
7 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
8 shall be conclusive evidence of the fact that the conviction occurred.”

9 7. Section 2234 of the Code states:

10 “The Division of Medical Quality shall take action against any licensee who is charged with
11 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
12 includes, but is not limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
15 Practice Act]. . . .”

16 “(e) The commission of any act involving dishonesty or corruption which is substantially
17 related to the qualifications, functions, or duties of a physician and surgeon.”

18 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially
20 related to the qualifications, functions, or duties of the business or profession for which the
21 license was issued.

22 9. Section 493 of the Code states:

23 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 10. California Code of Regulations, title 16, section 1360, states:

7 "For the purposes of denial, suspension or revocation of a license, certificate or permit
8 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
9 considered to be substantially related to the qualifications, functions or duties of a person holding
10 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
11 evidences present or potential unfitness of a person holding a license, certificate or permit to
12 perform the functions authorized by the license, certificate or permit in a manner consistent with
13 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
14 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of, or conspiring to violate any provision of the Medical Practice Act."

16 11. Section 2261 of the Code states:

17 "Knowingly making or signing any certificate or other document directly or indirectly
18 related to the practice of medicine or podiatry which falsely represents the existence or
19 nonexistence of a state of facts, constitutes unprofessional conduct."

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Conviction of Substantially Related Offense on November 23, 2009)

22 12. Respondent is subject to disciplinary action under sections 2227, 2234(a), 2236(a)
23 and 490 in that he committed unprofessional conduct when he was convicted of a crime
24 substantially related to the qualifications, functions or duties of his profession. The circumstances
25 are as follows:

26 13. On or about June 1, 2007, an information was filed in the United States District
27 Court, Eastern District of California, *United States of America v. Tomas Rios*, Case Number
28 10700146 AWI, charging Respondent with violating Title 26 of the United States Code, section

1 7206, subdivision (t) for making and subscribing a false income tax return, a felony. The United
2 States Attorney charged that:

3 "TOMAS RIOS, defendant herein, on or about October 17, 2003, within the
4 State and Eastern District of California, did willfully make and subscribe his U.S.
5 Form 1040 and schedules attached thereto, for the calendar year 2002, which form
6 contained a written declaration that it was made under penalty of perjury and was
7 filed with the Internal Revenue Service at Fresno, California, which income tax
8 form defendant TOMAS RIOS did not believe to be true and correct as to a material
9 matter, in that the tax form reported the total tax liability for the taxpayer named in
10 the form to be substantially less than the true and actual tax liability for the taxpayer
11 named in the form, as defendant TOMAS RIOS, then and there well knew and
12 believed, in violation of Title 26, United States Code Section Code, Section
13 7206(1)."

14 14. Respondent entered a plea agreement in which he pled guilty to the offense and
15 admitted that:

16 (a) on or about October 7, 2003, he willfully made and subscribed his U.S. Form
17 1040 and schedules attached to it for the calendar year 2002;

18 (b) the form contained a written declaration that it was filed under the penalty of
19 perjury;

20 (c) the form was filed with the Internal Revenue Service at Fresno, California;

21 (d) Rios did not believe the income tax form to be true and correct as to a material
22 matter, in that the tax form reported the total tax liability for the taxpayer named in the
23 form to be substantially less than the true and actual tax liability for defendant Rios;

24 (e) the loss to the Internal Revenue Service was approximately \$72,271.35.

25 15. In the plea agreement, "in exchange for the defendant's early acceptance of
26 responsibility, the government agree[d] to forego any other criminal charges under Title 26,
27 United States Code, for tax years 2001 to 2003." The government also agreed that after
28 Respondent cooperated with other investigations, trials and proceedings, it would "move the court

1 for a reduction of not more than fifty percent (50%) of [Respondent's] sentence." Additionally,
2 the government agreed to recommend that Respondent "receive a two-level reduction in the
3 computation of the offense level due to his acceptance of responsibility, provided the defendant
4 clearly and unequivocally accepts responsibility for his conduct" and to recommend that
5 Respondent "be sentenced at the low end of his applicable sentencing guideline range."

6 16. Based on his plea, on November 23, 2009, in *United States of America v. Tomas Rios*,
7 United States District Court, Eastern District of California, Case Number 10700146 AW1,
8 Respondent was convicted of violating Title 26 of the United States Code, section 7206,
9 subdivision (t) for making and subscribing a false income tax return, a felony. An Amended
10 Judgment was issued December 1, 2009 reflecting that judgment had been imposed on November
11 16, 2009. Respondent was sentenced to two years of probation. He was ordered to pay a fine of
12 \$100, a fine of \$30,000 and restitution to the Internal Revenue Service of \$22,271.35.

13 17. Respondent's felony conviction is substantially related to the practice of medicine.
14 First, Respondent's income earned in the year 2002 was primarily from the practice of medicine.
15 Second, the honesty of a physician is inextricably related to the functions and duties of a
16 physician and Respondent's dishonesty underlying his criminal felony conviction was significant.
17 Respondent signed and certified the truth of his tax return under penalty of perjury, although, in
18 fact, he believed he owed a substantially higher amount than he reported to be his tax liability.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Dishonest Act – 2002 Income Tax Return)

21 18. Respondent is subject to disciplinary action under section 2234(e) for committing a
22 dishonest act substantially related to his practice of medicine in that he made a false
23 representation on his federal income tax return for the year 2002, as more fully described above.

24 19. Respondent's dishonesty in making and subscribing a false income tax return is
25 substantially related to his practice of medicine for the reasons described in paragraph 17 above,
26 incorporated here.

27 ///

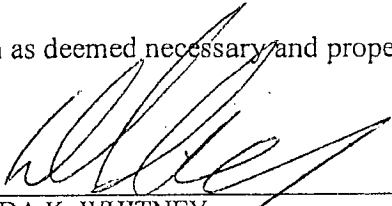
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A54078, issued to Tomas Ballesteros Rios, M.D..
2. Revoking, suspending or denying approval of Tomas Ballesteros Rios, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Tomas Ballesteros Rios, M.D., if placed on probation, to pay the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: August 17, 2010


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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