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9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation/Petition to
Revoke Probation Against,

14 **TOMAS BALLESTEROS RIOS, M.D.**
15 **300 Wai Nani Way, PH 12**
Honolulu, HI 96815
16 **Physician's and Surgeon's Certificate No. A**
54078,

Case No. 800-2019-053786

DEFAULT DECISION
AND ORDER

[Gov. Code, § 11520]

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18 One.

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20 **FINDINGS OF FACT**

21 1. On or about October 23, 2019, Complainant Kimberly Kirchmeyer, in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs, filed Accusation/Petition to Revoke Probation No. 800-2019-053786 against Tomas
24 Ballesteros Rios, M.D. (Respondent) before the Medical Board of California.

25 2. On or about March 29, 1995, the Medical Board of California (Board) issued
26 Physician's and Surgeon's Certificate No. A 54078 to Respondent. The Physician's and Surgeon's
27 Certificate expired on December 31, 2018, has not been renewed, and is in a delinquent status.

28 3. On or about July 18, 2019, a Medical Board Associate Governmental Program

1 Analyst served by Certified Mail a copy of the Accusation/Petition to Revoke Probation No. 800-
2 2019-053786, Statement to Respondent, Notice of Defense, Request for Discovery, and
3 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with
4 the Board, which was and is 300 Wai Nani Way, PH 12, Honolulu, HI 96815. A copy of the
5 Accusation/Petition to Revoke Probation, the related documents, and Declaration of Service are
6 attached as exhibit A, and are incorporated herein by reference.

7 4. On or about August 5, 2019, the United States Postal Service returned the copy of the
8 Accusation/Petition to Revoke Probation No. 800-2019-053786, Statement to Respondent, Notice
9 of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
10 11507.7 to the Board after two attempts to serve it to Respondent's address of record with the
11 Board, which was and is 300 Wai Nani Way, PH 12, Honolulu, HI 96815, marked "RETURN TO
12 SENDER UNCLAIMED UNABLE TO FORWARD." A copy of the Returned Envelope is
13 attached as Exhibit B and is incorporated herein by reference.

14 5. Service of the Accusation/Petition to Revoke Probation was effective as a matter of
15 law under the provisions of Government Code section 11505, subdivision (c).

16 6. On or about August 23, 2019, the Office of the Attorney General served Respondent
17 with a Courtesy Notice of Default.

18 7. No Notice of Defense was received by either the Board or the Office of the Attorney
19 General.

20 8. A copy of the Declaration of Staff Services Manager II Paulette Romero (Romero)
21 attesting to the foregoing facts is attached as Exhibit C, and is incorporated herein by reference.

22 9. On or about June 23, 2020, Romero reviewed the Board's records regarding
23 Respondent's compliance with his probation and the evidence demonstrating Respondent violated
24 numerous terms and conditions of his Probation Order which led to the filing of the
25 Accusation/Petition to Revoke Probation.

26 10. A copy of the Declaration of Romero attesting to her review of Respondent's
27 compliance with his probation is attached as Exhibit C, and is incorporated herein by reference.

28 11. Deputy Attorney General Wendy Widlus (Widlus) is assigned to prepare the Default

1 Decision & Order in the above matter and has reviewed the file. A copy of the Declaration of
2 Widlus attesting to the fact that no Notice of Defense from Respondent was ever received by the
3 California Department of Justice, Health Quality Enforcement Section is attached as exhibit D,
4 and is incorporated herein by reference.

5 12. Business and Professions Code section 118 states, in pertinent part:

6 (b) The suspension, expiration, or forfeiture by operation of law of a license
7 issued by a board in the department, or its suspension, forfeiture, or cancellation by
8 order of the board or by order of a court of law, or its surrender without the written
9 consent of the board, shall not, during any period in which it may be renewed,
10 restored, reissued, or reinstated, deprive the board of its authority to institute or
11 continue a disciplinary proceeding against the licensee upon any ground provided by
12 law or to enter an order suspending or revoking the license or otherwise taking
13 disciplinary action against the license on any such ground.

14 13. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 14. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation/Petition to Revoke Probation, and therefore waived his right to a hearing on the
22 merits of Accusation/Petition to Revoke Probation No. 800-2019-053786.

23 15. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 16. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on
Respondent's express admissions by way of default and the evidence before it, contained in
exhibits A, B, C, and D, which are incorporated here by reference, finds that the allegations in
Accusation/Petition to Revoke Probation No. 800-2019-053786 are true.

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DETERMINATION OF ISSUES

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1. Based on the foregoing findings of fact, Respondent TOMAS BALLESTEROS RIOS, M.D. has subjected his Physician's and Surgeon's Certificate No. A 54078 to discipline.

2. A copy of the Accusation/Petition to Revoke Probation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Accusation/Petition to Revoke Probation:

- a. First Cause To Revoke Probation: Failure to Maintain Current Address.
- b. Second Cause To Revoke Probation: Failure to Maintain Current License.
- c. Third Cause To Revoke Probation: Failure to Practice Medicine in Excess of Two Years.

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ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 54078, heretofore issued to Respondent TOMAS BALLESTEROS RIOS, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on JAN 15 2021.

It is so ORDERED DEC 18 2020


FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 18 2019
BY S. Richards ANALYST

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **TOMAS BALLESTEROS RIOS, M.D.**
14 **300 Wai Nani Way, PH 12**
Honolulu, HI 96815

15 **Physician's and Surgeon's Certificate No. A**
54078,
16 Respondent.

Case No. 800-2019-053786

ACCUSATION
AND
PETITION TO REVOKE PROBATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke
21 Probation solely in her official capacity as the Executive Director of the Medical Board of
22 California, Department of Consumer Affairs.

23 2. On or about March 29, 1995, the Medical Board of California issued Physician's and
24 Surgeon's Certificate Number A 54078 to Tomas Ballesteros Rios, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate expired on December 31, 2018, and has not been renewed.

26 3. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
27 *Ballesteros Rios, M.D.*, Case Number 19-2012-225650, the Medical Board of California issued a
28 decision, effective December 30, 2016, in which Respondent's physician's and surgeon's

1 certificate was revoked, the revocation was stayed, and his license was placed on probation for
2 seven years with terms and conditions. A copy of that decision is attached as Exhibit "A" and
3 incorporated by reference.

4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the Medical
6 Board of California (Board), Department of Consumer Affairs, under the authority of the
7 following laws. All section references are to the Business and Professions Code unless otherwise
8 indicated.

9 5. At all times after the effective date of Respondent's probation, Condition 14 of the
10 standard conditions stated:

11 "Violation of Probation.

12 "Failure to fully comply with any term or condition of probation is a violation of probation.

13 If Respondent violates probation in any respect, the Board, after giving Respondent notice and the
14 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
15 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
16 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
17 is final, and the period of probation shall be extended until the matter is final."

18 6. Section 2227 of the Code states:

19 (a) A licensee whose matter has been heard by an administrative law judge of
20 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
21 Code, or whose default has been entered, and who is found guilty, or who has entered
into a stipulation for disciplinary action with the board, may, in accordance with the
provisions of this chapter:

22 (1) Have his or her license revoked upon order of the board.

23 (2) Have his or her right to practice suspended for a period not to exceed one
24 year upon order of the board.

25 (3) Be placed on probation and be required to pay the costs of probation
monitoring upon order of the board.

26 (4) Be publicly reprimanded by the board. The public reprimand may include a
27 requirement that the licensee complete relevant educational courses approved by the
board.

28 (5) Have any other action taken in relation to discipline as part of an order of

1 probation, as the board or an administrative law judge may deem proper.

2 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
3 medical review or advisory conferences, professional competency examinations,
4 continuing education activities, and cost reimbursement associated therewith that are
5 agreed to with the board and successfully completed by the licensee, or other matters
6 made confidential or privileged by existing law, is deemed public, and shall be made
7 available to the public by the board pursuant to Section 803.1.

8 7. Section 2234 of the Code, states:

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

12 (a) Violating or attempting to violate, directly or indirectly, assisting in or
13 abetting the violation of, or conspiring to violate any provision of this chapter.

14 (b) Gross negligence.

15 (c) Repeated negligent acts. To be repeated, there must be two or more
16 negligent acts or omissions. An initial negligent act or omission followed by a
17 separate and distinct departure from the applicable standard of care shall constitute
18 repeated negligent acts.

19 (1) An initial negligent diagnosis followed by an act or omission medically
20 appropriate for that negligent diagnosis of the patient shall constitute a single
21 negligent act.

22 (2) When the standard of care requires a change in the diagnosis, act, or
23 omission that constitutes the negligent act described in paragraph (1), including, but
24 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
25 licensee's conduct departs from the applicable standard of care, each departure
26 constitutes a separate and distinct breach of the standard of care.

27 (d) Incompetence.

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

(f) Any action or conduct which would have warranted the denial of a
certificate.

(g) The practice of medicine from this state into another state or country
without meeting the legal requirements of that state or country for the practice of
medicine. Section 2314 shall not apply to this subdivision. This subdivision shall
become operative upon the implementation of the proposed registration program
described in Section 2052.5.

(h) The repeated failure by a certificate holder, in the absence of good cause, to
attend and participate in an interview by the board. This subdivision shall only apply
to a certificate holder who is the subject of an investigation by the board.

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1 8. Section 118, subdivision (b) of the Code states:

2 (b) The suspension, expiration, or forfeiture by operation of law of a license
3 issued by a board in the department, or its suspension, forfeiture, or cancellation by
4 order of the board or by order of a court of law, or its surrender without the written
5 consent of the board, shall not, during any period in which it may be renewed,
6 restored, reissued, or reinstated, deprive the board of its authority to institute or
7 continue a disciplinary proceeding against the licensee upon any ground provided by
8 law or to enter an order suspending or revoking the license or otherwise taking
9 disciplinary action against the licensee on any such ground.

10 **FIRST CAUSE TO REVOKE PROBATION**

11 (Maintain Current Address)

12 9. At all times after the effective date of Respondent's probation, Condition 10 stated in
13 relevant part:

14 "Respondent shall, at all times, keep the Board informed of Respondent's business and
15 residence addresses, email address (if available), and telephone number. Changes of such
16 addresses shall be immediately communicated in writing to the Board or its designee."

17 10. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
19 are as follows:

20 A. On or about December 13, 2016, Respondent's probation inspector (Inspector)
21 mailed a certified letter to Respondent requesting him to attend an intake appointment on
22 December 21, 2016, to review the terms and conditions of Respondent's probation.

23 B. On December 21, 2016, the Inspector and Respondent met and reviewed the terms
24 and conditions of Respondent's probation. The Inspector asked Respondent to hand write a letter
25 stating his intention to leave the United States for the Philippines and Hawaii. The letter he
26 printed and signed included two addresses in Hawaii and the Philippines, as well as his email
27 address.

28 After review of all of the terms and conditions of his probation Respondent signed the
"Acknowledgement of Decision" form.

C. Respondent failed to keep the Board informed of his current business, residence, and

1 email addresses. The Board mailed *Agreement for Surrender While on Probation* documents to
2 Respondent by certified mail on November 19, 2018. The certified mail envelope containing the
3 documents were returned to the Board after two attempts to deliver.

4 D. The *Agreement for Surrender While on Probation* documents were emailed to Dr.
5 Rios on November 20, 2018. Respondent failed to respond to the Board's email.

6 **SECOND CAUSE TO REVOKE PROBATION**

7 (Maintain Current License)

8 11. At all times after the effective date of Respondent's probation, Condition 10 stated in
9 pertinent part:

10 "Respondent shall maintain a current and renewed California physician's and surgeon's
11 license."

12 12. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
14 are as follows:

15 A. Respondent failed to maintain a current and renewed California physician's and
16 surgeon's license. Respondent's California physician's and surgeon's license expired December
17 31, 2018, and Respondent has not renewed his California physician's and surgeon's license.

18 **THIRD CAUSE TO REVOKE PROBATION**

19 (Non-Practice Exceeding Two Years)

20 13. At all times after the effective date of Respondent's probation, Condition 12 stated in
21 relevant part:

22 "Respondent's period of non-practice while on probation shall not exceed two (2) years.
23 Periods of non-practice will not apply to the reduction of the probationary period."

24 14. Respondent's probation is subject to revocation because he failed to comply with
25 Probation Condition 12, referenced above. The facts and circumstances regarding this violation
26 are as follows:

27 A. On June 13, 2018, the Board sent Respondent a letter which stated, inter alia,
28 "In addition, this letter is to notify you of the terms and conditions of your non-practice

1 status while on probation with the Medical Board (Board) of California as follows:

2 "1) Non-Practice While on Probation will exceed 18 calendar months on June 30, 2018.

3 You will be required to successfully complete a Board approved clinical training program prior to
4 resuming to the practice of medicine [sic]

5 "2) Non-Practice While on Probation will exceed two years on December 30, 2018 [sic]

6 "If you are unable to satisfy the terms and conditions of your probation, you may request a
7 voluntary surrender of your license."

8 B. Respondent has failed to practice medicine in excess of two (2) years.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct)

11 (Bus. & Prof. Code, §2234)

12 15. Respondent is subject to disciplinary action under section 2234 in that he engaged in
13 unprofessional conduct. The circumstances are as follows:

14 16. The facts and circumstances alleged in paragraphs 9 through 14 above are
15 incorporated here as if fully set forth.

16 **DISCIPLINE CONSIDERATIONS**

17 17. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
18 *Ballesteros Rios, M.D.*, Case Number 08-2007-185976, the Medical Board of California issued a
19 decision, effective June 15, 2011, in which Respondent's physician's and surgeon's certificate
20 was revoked, the revocation was stayed, and his license was placed on probation for three years
21 for conviction of a substantially related offense for making and subscribing a false income tax
22 return, a felony. That decision is now final and is incorporated by reference as if fully set forth
23 herein.

24 18. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
25 *Ballesteros Rios, M.D.*, Case Number 19-2012-225650, the Medical Board of California issued a
26 decision, effective December 30, 2016, in which Respondent's physician's and surgeon's
27 certificate was revoked, the revocation was stayed, and his license was placed on probation for
28 seven years for conviction of a substantially related offense for conspiracy to commit insurance


1 fraud, a felony, failure to report said conviction to the Board, unprofessional conduct, and
2 dishonest and corrupt acts. That decision is now final and is incorporated by reference as if fully
3 set forth herein.

4 **PRAYER**

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

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 54078,
8 issued to Tomas Ballesteros Rios, M.D.;
- 9 2. Revoking, suspending or denying approval of Tomas Ballesteros Rios, M.D.'s
10 authority to supervise physician's assistants, and advanced practice nurses;
- 11 3. Ordering Tomas Ballesteros Rios, M.D. to pay the Medical Board of California the
12 reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the
13 costs of probation monitoring;
- 14 4. Taking such other and further action as deemed necessary and proper.

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17 DATED: July 18, 2019

18 
19 KIMBERLY KIRCHMEYER
20 Executive Director
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California
24 Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 19-2012-225650.

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

10 In the Matter of the Accusation Against:

11 **TOMAS BALLESTEROS RIOS, M.D.**
12 9807 Lightner Way
13 Bakersfield, CA 93311

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

15 Respondent.

Case No. 19-2012-225650

OAH No. 2015121015

16
17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Tan N. Tran, Deputy
25 Attorney General.

26 2. Respondent TOMAS BALLESTEROS RIOS, M.D. ("Respondent") is represented in
27 this proceeding by attorney Lewis R. Walton, Esq., whose address is: 4640 Admiralty Way, 5th
28 Floor, Marina Del Rey, CA 90292.

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1 CULPABILITY

2 9. Respondent does not contest that at an administrative hearing, complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 19-2012-225650, and that he has thereby subjected his Physician's and Surgeon's Certificate
5 No. A54078 to disciplinary action.

6 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
7 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
8 Disciplinary Order below.

9 RESERVATION

10 11. The admissions made by Respondent herein are only for the purposes of this
11 proceeding, or any other proceedings in which the Medical Board of California or other
12 professional licensing agency is involved, and shall not be admissible in any other criminal or
13 civil proceeding.

14 CONTINGENCY

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

25 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
27 signatures thereto, shall have the same force and effect as the originals.
28

1 designee not later than 15 calendar days after successfully completing the course, or not later than
2 15 calendar days after the effective date of the Decision, whichever is later.

3 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
4 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
5 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
6 Respondent shall participate in and successfully complete that program. Respondent shall
7 provide any information and documents that the program may deem pertinent. Respondent shall
8 successfully complete the classroom component of the program not later than six (6) months after
9 Respondent's initial enrollment, and the longitudinal component of the program not later than the
10 time specified by the program, but no later than one (1) year after attending the classroom
11 component. The professionalism program shall be at Respondent's expense and shall be in
12 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

13 A professionalism program taken after the acts that gave rise to the charges in the
14 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
15 or its designee, be accepted towards the fulfillment of this condition if the program would have
16 been approved by the Board or its designee had the program been taken after the effective date of
17 this Decision.

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

21 4. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective
22 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
23 practice and billing monitor(s), the name and qualifications of one or more licensed physicians
24 and surgeons whose licenses are valid and in good standing, and who are preferably American
25 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
26 business or personal relationship with Respondent, or other relationship that could reasonably be
27 expected to compromise the ability of the monitor to render fair and unbiased reports to the
28 Board, including but not limited to any form of bartering, shall be in Respondent's field of

1 practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
2 costs.

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

10 Within 60 calendar days of the effective date of this Decision, and continuing throughout
11 probation, Respondent's practice and billing shall be monitored by the approved monitor.
12 Respondent shall make all records available for immediate inspection and copying on the
13 premises by the monitor at all times during business hours and shall retain the records for the
14 entire term of probation.

15 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
16 date of this Decision, Respondent shall receive a notification from the Board or its designee to
17 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
18 shall cease the practice of medicine until a monitor is approved to provide monitoring
19 responsibility.

20 The monitor(s) shall submit a quarterly written report to the Board or its designee which
21 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
22 are within the standards of practice of medicine and billing, and whether Respondent is practicing
23 medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to
24 ensure that the monitor submits the quarterly written reports to the Board or its designee within
25 10 calendar days after the end of the preceding quarter.

26 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
27 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
28 name and qualifications of a replacement monitor who will be assuming that responsibility within

1 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
2 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
3 notification from the Board or its designee to cease the practice of medicine within three (3)
4 calendar days after being so notified Respondent shall cease the practice of medicine until a
5 replacement monitor is approved and assumes monitoring responsibility.

6 In lieu of a monitor, Respondent may participate in a professional enhancement program
7 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
8 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
9 chart review, semi-annual practice assessment, and semi-annual review of professional growth
10 and education. Respondent shall participate in the professional enhancement program at
11 Respondent's expense during the term of probation.

12 5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
13 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
14 where: 1) Respondent merely shares office space with another physician but is not affiliated for
15 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
16 location.

17 If Respondent fails to establish a practice with another physician or secure employment in
18 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
19 Respondent shall receive a notification from the Board or its designee to cease the practice of
20 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
21 practice until an appropriate practice setting is established.

22 If, during the course of the probation, the Respondent's practice setting changes and the
23 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
24 shall notify the Board or its designee within 5 calendar days of the practice setting change. If
25 Respondent fails to establish a practice with another physician or secure employment in an
26 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
27 shall receive a notification from the Board or its designee to cease the practice of medicine within
28 three (3) calendar days after being so notified. The Respondent shall not resume practice until an

1 appropriate practice setting is established.

2 STANDARD CONDITIONS

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

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

12 7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
13 prohibited from supervising physician assistants.

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

17 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
18 under penalty of perjury on forms provided by the Board, stating whether there has been
19 compliance with all the conditions of probation.

20 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
21 of the preceding quarter.

22 10. GENERAL PROBATION REQUIREMENTS.

23 Compliance with Probation Unit

24 Respondent shall comply with the Board's probation unit and all terms and conditions of
25 this Decision.

26 Address Changes

27 Respondent shall, at all times, keep the Board informed of Respondent's business and
28 residence addresses, email address (if available), and telephone number. Changes of such

1 addresses shall be immediately communicated in writing to the Board or its designee. Under no
2 circumstances shall a post office box serve as an address of record, except as allowed by Business
3 and Professions Code section 2021(b).

4 Place of Practice

5 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
6 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
7 facility.

8 License Renewal

9 Respondent shall maintain a current and renewed California physician's and surgeon's
10 license.

11 Travel or Residence Outside California

12 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
13 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
14 (30) calendar days.

15 In the event Respondent should leave the State of California to reside or to practice
16 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
17 departure and return.

18 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
19 available in person upon request for interviews either at Respondent's place of business or at the
20 probation unit office, with or without prior notice throughout the term of probation.

21 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
22 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
23 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
24 defined as any period of time Respondent is not practicing medicine in California as defined in
25 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
26 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
27 time spent in an intensive training program which has been approved by the Board or its designee
28 shall not be considered non-practice. Practicing medicine in another state of the United States or

1 Federal jurisdiction while on probation with the medical licensing authority of that state or
2 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
3 not be considered as a period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete a clinical training program that meets the criteria
6 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
7 Disciplinary Guidelines" prior to resuming the practice of medicine.

8 Respondent's period of non-practice while on probation shall not exceed two (2) years.

9 Periods of non-practice will not apply to the reduction of the probationary term.

10 Periods of non-practice will relieve Respondent of the responsibility to comply with the
11 probationary terms and conditions with the exception of this condition and the following terms
12 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

17 14. 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, or 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 15. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

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

6 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
7 with probation monitoring each and every year of probation, as designated by the Board, which
8 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
9 California and delivered to the Board or its designee no later than January 31 of each calendar
10 year.

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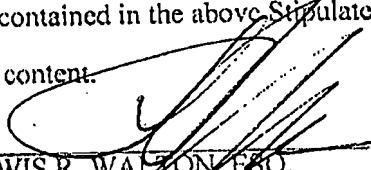
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Lewis R. Walton, Esq.. 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: 11/16/16 
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: 11/16/16 
LEWIS R. WALTON, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 11/17/16 Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General


TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 19-2012-225650

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 1 2015
BY D. Richards ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
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3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
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5 300 So. Spring Street, Suite 1702
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6 Telephone: (213) 897-6793
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 19-2012-225650

12 **Tomas Ballesteros Rios, M.D.**
13 **1436 Crestmont Drive, Unit 6726**
Bakersfield, CA 93386-7036

ACCUSATION

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

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 29, 1995, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A54078 to Tomas Ballesteros Rios, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2016, unless renewed.

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1 JURISDICTION

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

4 4. Section 2004 of the Code states:

5 "The board shall have the responsibility for the following:

6 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
7 Act.

8 "(b) The administration and hearing of disciplinary actions.

9 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
10 administrative law judge.

11 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
12 disciplinary actions.

13 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
14 certificate holders under the jurisdiction of the board.

15 "(f) Approving undergraduate and graduate medical education programs.

16 "(g) Approving clinical clerkship and special programs and hospitals for the programs in
17 subdivision (f).

18 "(h) Issuing licenses and certificates under the board's jurisdiction.

19 "(i) Administering the board's continuing medical education program."

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

24 6. Section 2234 of the Code, states:

25 "The board shall take action against any licensee who is charged with unprofessional
26 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
27 limited to, the following:

28 ///

1 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 (b) Gross negligence.

4 (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 (1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 (2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 (d) Incompetence.

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

17 (f) Any action or conduct which would have warranted the denial of a certificate.

18 (g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 (h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board."

25 7. Section 2236 of the Code states:

26 (a) The conviction of any offense substantially related to the qualifications, functions, or
27 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
28

1 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
2 evidence only of the fact that the conviction occurred.

3 • “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
4 Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or
5 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
6 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
7 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
8 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
9 a license as a physician and surgeon.

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

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

18 8. Section 802.1 of the Code states:

19 “(a) (1) A physician and surgeon, doctor of podiatric medicine and a physician assistant
20 shall report either of the following to the entity that issued his or her license:

21 “(A) The bringing of an indictment or information charging a felony
22 against the licensee.

23 “(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no
24 contest, of any felony or misdemeanor.

25 _____
26 ¹ California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
28 the State Medical Practice Act (Cal. Bus. & Prof. Code, section 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.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action for unprofessional conduct under section 2234 of the Code.

15. Paragraphs 10 through 11, inclusive, above are incorporated by reference herein as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Dishonest/Corrupt Acts)

16. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action for dishonest/corrupt acts under section 2234, subdivision (e), of the Code.

17. Paragraphs 10 through 11, inclusive, above are incorporated by reference herein as if fully set forth.

PRAYER

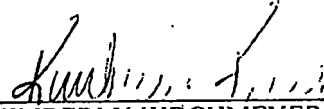
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

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 Board the costs of probation monitoring;
4. Ordering Tomas Ballesteros Rios, M.D. to pay fines and penalties pursuant to section 802.1 of the Code; and

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5. Taking such other and further action as deemed necessary and proper.

DATED: October 1, 2015



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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