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

In the Matter of the Accusation Against: Rodolfo Ecaro Magsino, M.D. Physician's and Surgeon's Certificate No. A 31070 Respondent.	Case No. 800-2019-054769

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 5, 2021.

IT IS SO ORDERED March 29, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
State Bar No. 282868
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **RODOLFO ECARO MAGSINO, M.D.** **1436 Butterfield Avenue** **San Dimas, CA 91773** **Physician's and Surgeon's Certificate No. A 31070,** Respondent.	Case No. 800-2019-054769 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Brian Roberts, Deputy Attorney General.

2. Rodolfo Ecaro Magsino, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq.

3. On or about May 23, 1977, the Board issued Physician's and Surgeon's Certificate No. A 31070 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-054769 and expired on July 31, 2020.

JURISDICTION

4. Accusation No. 800-2019-054769 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 29, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-054769 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-054769. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2019-054769, agrees that cause exists for discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. A 31070 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation, he enables the Board to issue

an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

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

CONTINGENCY

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

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 31070, issued to Respondent, is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part

of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2019-054769 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2019-054769 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

///

///

///

ACCEPTANCE

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

DATED: 2-23-21

RODOLFO ECARO MAGSINO, M.D.
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matter contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: March 2, 2021

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 3/8/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

BRIAN ROBERTS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2019-054769

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
State Bar No. 282868
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Rodolfo Ecaro Magsino, M.D.** **1436 Butterfield Avenue** **San Dimas, CA 91773-1117** **Physician's and Surgeon's Certificate No. A 31070,** Respondent.	Case No. 800-2019-054769 **ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about May 23, 1977, the Medical Board issued Physician's and Surgeon's Certificate Number A 31070 to Rodolfo Ecaro Magsino, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and expired on July 31, 2020.

///

JURISDICTION

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

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

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

(b) The administration and hearing of disciplinary actions.

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

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

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

(f) Approving undergraduate and graduate medical education programs.

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

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

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

5. 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 Board deems proper.

6. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

(g) The 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.

7. 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 Medical Board 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.

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

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

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

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

9. Section 118 of the Code states:

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

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

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

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

FACTUAL SUMMARY

11. On February 11, 2020, in the case entitled *The People of the State of California v. Rodolfo Ecaro Magsino*, case number BA464660, in the Superior Court of California, County of Los Angeles, Respondent, upon a plea of nolo contendere, was convicted of a violation of Business and Professions Code section 650, subdivision (a), soliciting or accepting fees for patient referrals, a felony. All other charges were dismissed as the result of the plea agreement.

Respondent was sentenced to the following terms and conditions:

A. 3 years of formal probation.

B. Obey all laws and orders of the court.

C. Obey all rules and regulations of the probation department.

D. Submit person and property to search and seizure.

12. The circumstances leading to the above-referenced conviction are as follows:

A. In or around May of 2015, a hospice company representative (R-1) had a meeting with Grace Schwartz, the wife of the administrator at Allen Care Center (ACC), a skilled nursing facility. Schwartz relayed to R-1 that she knew doctors who could refer patients to R-1's hospice company in exchange for money. In exchange for the referrals, R-1 would have to pay Schwartz $600 per patient and the doctors $600 for each month the patients remained on hospice.

B. On January 4, 2016, Schwartz spoke with R-1 via telephone and offered to refer patients to R-1's hospice company. Schwartz indicated that she expected to be paid for the referrals and expected R-1 to pay the doctors who would write the prescriptions for hospice.

C. At an in-person meeting on January 5, 2016, Schwartz relayed to R-1 that she expected to be paid $800 per week and $500 for each patient she referred. Schwartz also stated that R-1 would have to pay, per patient, $500 to the doctor who wrote the prescription for hospice and $500 to the administration of the facility where the patient resided. These payments were to be paid each month as long as the patient remained on hospice. A written contract expressing these terms was presented to R-1 by Schwartz and both parties signed the contract.

D. Shortly thereafter, R-1 received the files of two patients who had been referred by Schwartz from San Dimas Retirement Center (SDRC). Included in the files was documentation that Respondent was the attending physician for Patient 1[1] (P-1), one of the referred patients. Additionally, Schwartz provided documentation to R-1 for the referral of Patient 2 (P-2). This documentation included a hospice prescription for P-2 signed by Respondent.

E. By January 21, 2016, Schwartz had referred more than ten patients to R-1; however, only five were accepted for hospice. The orders for hospice care for at least one of the

[1] Patient names are withheld to protect privacy.

referred patients had been written by Respondent.

F. On or around January 21, 2016, Schwartz referred Patient 3 (P-3) to R-1 for hospice care and sent a patient file along with the referral. The order for hospice care included in the file was written by Respondent.

G. On January 28, 2016, R-1 met Schwartz for a planned meeting. The purpose of the meeting was for R-1 to pay Schwartz for the referrals for P-1 and P-2. At the meeting, R-1 told Schwartz that he would not pay her a salary because the salary could be traced to his company. R-1 told Schwartz that he would pay her $500 per patient referral and $500 to the doctors per patient referral. Schwartz produced a document that had a list of the referred patients. The list also included the amounts owed to Respondent. R-1 paid a total of $1,000 to Schwartz for P-1 and P-2. R-1 asked Schwartz not to pay Respondent in advance because he wanted to pay Respondent in person.

H. On February 5, 2016, R-1 met at the office of Respondent. The purpose of the meeting was to pay Respondent for the referrals of P-1, P-2, P-3, and 3 additional patients that had been referred in the interim: Patient 4 (P-4), Patient 5 (P-5), and Patient 6 (P-6). At the meeting, R-1 paid $3,000 to Respondent and $2,000 to Schwartz for the referrals. R-1 told Respondent that the payments were for the month of January for P-1 through P-6. R-1 had Respondent sign paperwork from the files of the referred patients.

I. On March 14, 2016, R-1 met at the office of Respondent. The purpose of the meeting was to pay Respondent for the month of February for the referrals of P-4, P-5, P-6. Present at the meeting were Respondent, R-1, and Schwartz. R-1 placed three piles of money onto a table. Each pile contained $500. R-1 pointed to the first pile and stated that it was for P-4. R-1 pointed to the second and third piles of money and Schwartz stated that those piles were for P-5 and P-6, respectively. Respondent took possession of all three piles of money and placed the money in his pocket.

J. On May 11, 2016, R-1 met at the office of Respondent. The purpose of the meeting was to pay Respondent $500 for the month of April for the referral of P-4. Present at the meeting were Respondent and R-1. At the meeting, R-1 produced $500 while telling Respondent

that the money was for P-4 for the month of April. R-1 placed the money in the envelope and handed it to Respondent. Respondent placed the money in a desk drawer. During the meeting, R-1 proposed that he pays Respondent a lump-sum amount for patient referrals instead of their current per month arrangement. Respondent and R-1 agreed upon a lump-sum amount of $1,000 per patient. Respondent and R-1 also agreed that Respondent would contact R-1 directly with patient referrals and that they would no longer use Schwartz as an intermediary.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

13. Respondent is subject to disciplinary action under section 2236, subdivision (a), and section 490 of the Code, as well as California Code of Regulations, title 16, section 1360, in that Respondent has been convicted of crimes substantially related to the qualifications, function or duties of a physician and surgeon. Complainant refers to and, by this reference, incorporates herein, paragraphs 11 and 12, as though fully set forth herein.

14. Respondent's acts and/or omissions as set forth in paragraphs 11 and 12, whether proven individually, jointly, or in any combination thereof, constitute convictions of crimes substantially related to the qualifications, function or duties of a physician and surgeon pursuant to section 2236, subdivision (a), and section 490 of the Code, as well as California Code of Regulations, title 16, section 1360. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Act Involving Dishonesty or Corruption)

15. Respondent is subject to disciplinary action under section 2234, subdivision (e), in that Respondent committed an act involving dishonesty or corruption that was substantially related to the qualifications, functions, or duties of a physician and surgeon. Complainant refers to and, by this reference, incorporates herein, paragraphs 11 and 12, as though fully set forth herein.

16. Respondent's acts and/or omissions as set forth in paragraphs 11 and 12, whether proven individually, jointly, or in any combination thereof, involve dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon

pursuant to Section 2234, subdivision (e), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

17. Respondent is subject to disciplinary action under section 2234 of the Code, in that he engaged in unprofessional conduct generally. Complainant refers to and, by this reference, incorporates herein, paragraphs 11 through 16, as though fully set forth herein.

18. Respondent's acts and/or omissions as set forth in paragraphs 11 through 16, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to section 2234 of the Code. Therefore, cause for discipline exists.

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 A 31070, issued to Rodolfo Ecaro Magsino, M.D.;

2. Revoking, suspending or denying approval of Rodolfo Ecaro Magsino, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Rodolfo Ecaro Magsino, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: OCT 29 2020

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2020501558
63422712.docx