

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

In the Matter of the Accusation
Against:

Elena V. Sagayan, M.D.

Physician's & Surgeon's
Certificate No A 92311

Respondent

Case No. 800-2017-029986

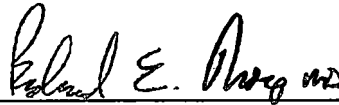
DECISION

The attached Stipulated Settlement for Public Reprimand and Disciplinary 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 June 25, 2021.

IT IS SO ORDERED May 26, 2021.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LYNNE K. DOMBROWSKI
Deputy Attorney General
4 State Bar No. 128080
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5 San Francisco, CA 94102-7004
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7 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **ELENA V. SAGAYAN, M.D.**
The Permanente Medical Group Inc.
3000 Las Positas Road
15 Livermore, CA 94551

16 Physician's and Surgeon's Certificate
No. A 92311

17 Respondent.
18

Case No. 800-2017-029986

OAH No. 2020110109

19
20 **STIPULATED SETTLEMENT FOR**
21 **PUBLIC REPRIMAND AND**
22 **DISCIPLINARY ORDER**

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

25 **PARTIES**

26 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
27 California (Board). He brings this action solely in his official capacity and is represented in this
28 matter by Xavier Becerra, Attorney General of the State of California, by Lynne K. Dombrowski,
Deputy Attorney General.

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1 2. Respondent Elena V. Sagayan, M.D. (Respondent) is represented in this proceeding
2 by attorney Ann H. Larson, whose address is: Craddick, Candland & Conti, 2420 Camino
3 Ramon, Suite 202, San Ramon, CA 94583-4202, E-mail: alarson@ccclawfirm.com.

4 3. On or about July 27, 2005, the Board issued Physician's and Surgeon's Certificate No.
5 A 92311 to Elena V. Sagayan, M.D. (Respondent). The Physician's and Surgeon's Certificate was
6 in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-
7 029986, and will expire on June 30, 2021, unless renewed.

8 **JURISDICTION**

9 4. Accusation No. 800-2017-029986 was filed before the Board, and is currently
10 pending against Respondent. The Accusation and all other statutorily required documents were
11 properly served on Respondent on August 7, 2019. Respondent timely filed her Notice of
12 Defense contesting the Accusation.

13 5. A copy of Accusation No. 800-2017-029986 is attached as Exhibit A and is
14 incorporated herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 800-2017-029986. Respondent has also carefully read,
18 fully discussed with her counsel, and understands the effects of this Stipulated Settlement for
19 Public Reprimand and Disciplinary Order.

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

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

28 ///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2017-029986, if proven at a hearing, constitute cause for imposing discipline upon her
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest
8 those charges.

9 11. Respondent agrees that her Physician's and Surgeon's Certificate is subject to
10 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the
11 Disciplinary Order below.

12 CONTINGENCY

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

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

26 14. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
28 enter the following Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 A. PUBLIC REPRIMAND

3 IT IS HEREBY ORDERED that Respondent Elena V. Sagayan, M.D.'s Physician's and
4 Surgeon's Certificate No. A 92311 shall be and hereby is publicly reprimanded pursuant to
5 California Business and Professions Code section 2227, subdivision (a)(4). This public
6 reprimand, which is issued in connection with Respondent's conduct as set forth in Accusation
7 No. 800-2017-029986, is as follows:

8 You demonstrated unprofessional conduct with regard to your care and treatment of
9 Patient A, pursuant to Business and Professions Code section 2234, subdivision (c).

10 B. EDUCATION COURSE.

11 IT IS FURTHER ORDERED that within 60 calendar days of the effective date of this
12 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
13 program(s) or course(s), which shall not be less than 8 hours total, that shall be aimed at physician
14 management of labor and delivery for high-risk patients and that shall be Category I certified.
15 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
16 to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent
17 shall successfully complete the 8 hours of educational courses within one year from the effective
18 date of the Decision.

19 Course(s) taken after the acts that gave rise to the charges in the Accusation but prior to the
20 effective date of the Decision may, in the sole discretion of the Board or its designee be accepted
21 towards the fulfillment of this condition if the course(s) would have been approved by the Board
22 or its designee had the course been taken after the effective date of the Decision.


23 Respondent shall submit a certification of successful completion of the 8 hours of
24 educational course(s) to the Board or its designee not later than 15 calendar days after
25 successfully completing the course(s), or not later than 15 calendar days after the effective date of
26 the Decision, whichever is later.

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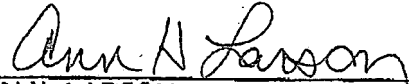
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ACCEPTANCE

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

DATED: 3/10/2021 
ELENA V. SAGAYAN, M.D.
Respondent

I have read and fully discussed with Respondent Elena V. Sagayan, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement for Public Reprimand and Disciplinary Order. I approve its form and content.

DATED: 3/11/21 
ANN H. LARSON
CRADDICK, CANDLAND & CONTI
Attorney for Respondent

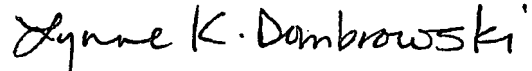
ENDORSEMENT

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

DATED: 03/12/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



LYNNE K. DOMBROWSKI
Deputy Attorney General
Attorneys for Complainant

SF2019201113

Exhibit A

Accusation No. 800-2017-029986

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK-SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 7 20 19
BY S. JACOBSON ANALYST

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

13 In the Matter of the Accusation Against:

Case No. 800-2017-029986

14 **Elena V. Sagayan, M.D.**
The Permanente Medical Group Inc.
15 3000 Las Positas Road
Livermore, CA 94551

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. A 92311,**

18 Respondent.

19
20 **PARTIES**

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

24 2. On or about July 27, 2005, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A 92311 to Elena V. Sagayan, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2021, 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 (Code) unless otherwise
4 indicated.

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

9 5. Section 2234 of the Code, states, in relevant part:

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

12 "..."

13 (b) Gross negligence.

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

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

19 (2) When the standard of care requires a change in the diagnosis, act, or
20 omission that constitutes the negligent act described in paragraph (1); including, but
21 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.

22 "..."

23 CAUSE FOR DISCIPLINE

24 **(Unprofessional Conduct: Gross Negligence, and/or Repeated Negligent Acts)**

25 6. Respondent Elena V. Sagayan, M.D. is subject to disciplinary action under sections
26 2234 [unprofessional conduct], and/or 2234 (b) [gross negligence], and/or 2234(c) [repeated
27 negligent acts] based on the care provided to Patient A.¹ The circumstances are as follows:

28 ¹ The term "Patient A" is used to protect the patient's privacy. Respondent learned the
(continued...)

1 7. On or about, July 19, 2011, Patient A presented to the Kaiser Permanente, Antioch
2 Labor and Delivery Unit with leaking amniotic fluid. Patient A was 27 years old, and 40 weeks
3 pregnant with an expected delivery date of July 18, 2011. A Certified Nurse Midwife (CNM)
4 evaluated Patient A and determined that she was dilated to 3.5 centimeters (cm), 75% effaced,²
5 and at -3 station.³ The fetal heart tracings (FHT) were classified as Category I with a Fetal Heart
6 Rate (FHR) of 155 beats per minute (bpm), minimal variability and accelerations.⁴ Patient A also
7 tested positive for Group B Strep (GBS).⁵ After further observation, she was cleared for
8 discharge.

9 8. On or about July 20, 2011, at approximately 10:30 p.m., Patient A returned to the
10 Labor and Delivery Unit with complaints of contractions. Patient A was placed under the care of
11 a CNM, who Respondent was responsible for supervising. A registered nurse evaluated Patient A
12 at admission and determined she was 4-5 cm dilated, 90% effaced, and at -4 station. The FHT
13 showed a FHR of 170 bpm with minimal variability. The FHR baseline remained at 170 bpm
14 with improved variability but also had variable decelerations. When Patient A's contractions
15 were every minute and a half to three minutes the FHR increased to 175 to 180 bpm. Respondent
16 did not review Patient A's FHT at admission, including from the July 19, 2011 admission.

17 ∥

18 ∥

19
20 (...continued)
21 identity of the patient during the investigation.

22 ² Effaced means how far the cervix has stretched and thinned to prepare for delivery.

23 ³ Station means how far the fetus has descended into the pelvis.

24 ⁴ Fetal heart tracing categories are classified as I, II, or III. Category I is a normal baseline
25 rate. Category II indicates that the tracing is neither a Category I nor III and is not normal or
26 definitively abnormal. Category III indicates that the fetus' heart rate is clearly abnormal with
27 either recurrent late decelerations, recurrent variable decelerations, or bradycardic. Category III
28 tracings are associated with an increased risk of neonatal encephalopathy, cerebral palsy, or fetal
acidemia. The FHR normally ranges between 120 to 160 beats per minute. FHR's above 160 are
considered tachycardic while FHR's below 120 are considered bradycardic. FHT's that are called
variable mean that that the FHR is fluctuating. Persistent or absent variability of FHR's are a
major indication that the fetus is in danger.

⁵ GBS means Group B streptococcus which is a type of bacterial infection found in the
vagina or rectum and can be passed to the baby during delivery and can cause serious health
issues to the baby if transmitted.

1 9. At approximately 1:02 a.m. on July 21, 2011, Patient A's membranes ruptured and
2 the nurse described the fluid as a thick, particulate meconium with a foul odor. The FHR
3 remained at 180 bpm until approximately 1:30 a.m. At approximately 1:11 a.m., the nurse or
4 CNM notified Respondent of the rupture of membranes, as well as the prolonged deceleration of
5 the FHR with minimal variability. Respondent ordered penicillin prophylactically, but
6 Respondent did not conduct any further assessment of the patient to ensure fetal oxygenation had
7 not been interrupted. Respondent failed to take measures to assess the risk of infection or
8 whether the amniotic sac was compromised: she did not order testing with nitrazine paper to
9 identify changes in the vaginal pH, did not order Valsalva⁶ maneuvers or ambulation of the
10 patient to push additional fluid out of the uterus while under pressure, and did not swab the
11 vaginal fluid to look under a microscope whether there was amniotic fluid present. Furthermore,
12 Respondent failed to assess the amniotic fluid levels by way of an ultrasound.

13 10. At approximately 2:12 a.m., an anesthesiologist administered an epidural for Patient
14 A's pain; however, by 2:49 a.m. the nurse noted that the FHT's showed prolonged decelerations
15 and FHR of 90 bpm and the nurse called the CNM. After 3:00 a.m., the nurse noted that there
16 was a shift and the FHT's showed decelerations with a FHR of 140 bpm. Then a one minute
17 deceleration occurred, followed by another 90 second deceleration associated with four
18 contractions in a five minute period. At 3:40 a.m., Patient A was completely dilated but the FHR
19 was 90 bpm with severe fetal bradycardia.

20 11. At 3:52 a.m. a Code C⁷ was called and Respondent responded to the Labor and
21 Delivery operating room at 3:59 a.m. Respondent noted that the epidural was not sufficient
22 anesthesia and general anesthesia was administered. Respondent also observed that Patient A
23 was having tetanic contractions and ordered terbutaline.⁸ Respondent also administered local
24

25 ⁶ A Valsalva maneuver is when a person holds his or her breath during exertion, which
can increase intra-abdominal pressure.

26 ⁷ A Code C means an emergency/life threatening cesarean section is required.

27 ⁸ Respondent's Operative Report stated that Patient A was having "Titanic Contractions;"
28 however, it is likely Respondent meant "tetanic contractions." A tetanic contraction is a
contraction lasting longer than 90 seconds. Terbutaline is used to prevent and slow contractions
in the uterus.

1 anesthesia to Patient A's abdomen in order to begin the C-section as quickly as possible at 4:05
2 a.m. Respondent delivered the baby at 4:07 a.m. with a one minute APGAR score of 0/2/4.⁹ The
3 baby was eventually diagnosed with hypoxic ischemic encephalopathy due to birth trauma. The
4 pathology report of the placenta noted: "Copious overgrowth of bacteria . . . with abundant
5 meconium-laden microphages . . . (and) villous tissue with chorangiosis."

6 12. Respondent's conduct, acts, and/or omissions with regard to Patient A constitutes
7 unprofessional conduct (gross negligence and/or repeated negligent acts) based on the following:

- 8 a. Respondent did not properly manage the Patient's rupture of membranes;
9 b. Respondent failed to act upon the recurrent non-reassuring FHR pattern;
10 c. Respondent did not adequately supervise the CNM, particularly when Patient A was
11 admitted to the Labor and Delivery Unit with increased risk factors and as her labor progressed
12 and her risk factors increased;
13 d. Respondent also failed to properly monitor the FHT's and then follow-up with the
14 patient after the rupture of membranes with thick meconium discharge; and
15 e. Respondent failed to coordinate care with the CNM and take over the care of Patient
16 A following the rupture of membranes.

17 **PRAYER**

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

- 20 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 92311,
21 issued to Elena V. Sagayan, M.D.;
- 22 2. Revoking, suspending or denying approval of Elena V. Sagayan, M.D.'s authority to
23 supervise physician assistants and advanced practice nurses;
- 24


25 ⁹ APGAR scores are given to newborns at one and five minutes after birth to evaluate the
26 baby's heart rate, muscle tone, and other signs to determine if emergency treatment is needed.
27 APGAR stands for Appearance, Pulse, Grimace, Activity, and Respiration. Scores are between
28 zero and 10. When a score is on the low end of the scale it means that the baby needs immediate
medical care. It is not uncommon to have a low APGAR score one minute after birth, particularly
in babies delivered after a high-risk pregnancy or by C-section.

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3. Ordering Elena V. Sagayan, 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: August 7, 2019


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

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