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

In the Matter of the Second Amended Accusation Against: **Silvia Margarita Diego, M.D.** **Physician's and Surgeon's Certificate No. A 54944** **Respondent.**	**Case No.: 800-2018-044775**

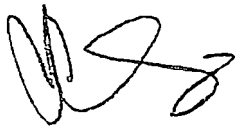
DECISION

The attached Stipulated Settlement 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 March 16, 2023.

IT IS SO ORDERED: February 14, 2023.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the Second Amended Accusation Against: **SILVIA MARGARITA DIEGO, M.D.** **1317 Oakdale Road, Suite 440** **Modesto, CA 95355** **Physician's and Surgeon's Certificate No. A 54944** Respondent.	Case No. 800-2018-044775 OAH No. 2021080552 **STIPULATED SETTLEMENT AND DISCIPLINARY 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 Rob Bonta, Attorney General of the State of California, by Marianne A. Pansa, Deputy Attorney General.

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2. Respondent Silvia Margarita Diego, M.D. (Respondent) is represented in this proceeding by attorney Nicole D. Hendrickson, whose address is: 655 University Avenue, Suite 119, Sacramento, CA 95825.

3. On or about October 11, 1995, the Board issued Physician's and Surgeon's Certificate No. A 54944 to Silvia Margarita Diego, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2018-044775, and will expire on February 28, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-044775 was filed before the Board on June 4, 2021, and was superseded when Second Amended Accusation No. 800-2018-044775 was filed before the Board. The Accusation, the First Amended Accusation, the Second Amended Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed her Notice of Defense contesting the Accusation. The Second Amended Accusation No. 800-2018-044775 was deemed controverted in light of Respondent's filing of the Notice of Defense to the original pleading.

5. A copy of Second Amended Accusation No. 800-2018-044775 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 800-2018-044775. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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.

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Second Amended Accusation No. 800-2018-044775, a true and correct copy of which is attached hereto as Exhibit A, and that she has thereby subjected her Physician's and Surgeon's Certificate, No. A 54944, to disciplinary action.

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 Settlement 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. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in Second Amended Accusation No. 800-2018-044775 shall be deemed true, correct and fully admitted by Respondent for purposes of any

such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 54944 issued to Respondent Silvia Margarita Diego, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course

not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Second Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Second Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than

15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices

are within the standards of practice of medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

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

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

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court

ordered criminal probation, payments, and other orders.

7. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena enforcement, as applicable, in the amount of $18,000.00 (eighteen thousand dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs, including expert review costs (if applicable).

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

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

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

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Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while

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

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

12. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

16. FUTURE ADMISSIONS CLAUSE. 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 action agency in the State of California, all of the charges and allegations contained in Second Amended Accusation No. 800-2018-044775 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 the license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Nicole D. Hendrickson. 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: 8/31/22

SILVIA MARGARITA DIEGO, M.D.
Respondent

I have read and fully discussed with Respondent Silvia Margarita Diego, 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: 08/31/2022

NICOLE D. HENDRICKSON
Attorney for Respondent

ENDORSEMENT

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

DATED: 8/31/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL,
Supervising Deputy Attorney General

MARIANNE A. PANSA
Deputy Attorney General
Attorneys for Complainant

ROB BONTA
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Attorneys for Complainant

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

In the Matter of the Second Amended Accusation Against: **SILVIA MARGARITA DIEGO, M.D.** **1317 Oakdale Road, Suite 440** **Modesto, CA 95355** **Physician's and Surgeon's Certificate No. A 54944,** Respondent.	Case No. 800-2018-044775 **SECOND AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this Second Amended 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 October 11, 1995, the Board issued Physician's and Surgeon's Certificate Number A 54944 to Silvia Margarita Diego, 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 will expire on February 28, 2023, unless renewed.

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JURISDICTION

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

Section 2227 states, in pertinent part:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government 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:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> [¶] . . . [¶]

STATUTORY PROVISIONS

4. Unprofessional conduct under section 2234 is conduct that breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.[1]

5. Section 2234 states, in pertinent part:

> 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

[1] *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

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.

[P] . . . [P]

COST RECOVERY

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,[2] with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

7. Norco® (acetaminophen and hydrocodone bitartrate) is an opiate/narcotic medication that has a high potential for abuse. Norco is a Schedule II controlled substance under Health and Safety Code section 11055, and a Schedule II controlled substance under section 1308.12 of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Business and Professions Code section 4022.

8. Hydrocodone Bitartrate – Acetaminophen or Acetaminophen – Hydrocodone Bitartrate is also known under the brand names of Lorcet®, Lortab®, Norco® and Vicodin®. Hydrocodone Bitartrate – Acetaminophen or Acetaminophen – Hydrocodone Bitartrate is an opioid pain medication used for relief from moderate to moderately severe pain and has a high potential for abuse. It is a Schedule II controlled substance pursuant to Health and Safety Code

[2] As of November 18, 2021, Section 125.3 of the Code has been amended to remove subsection (k), which precluded the Board from collecting costs. The Board may collect investigation, prosecution, and other costs incurred for a disciplinary proceeding against a licensee as of January 1, 2022.

section 11055, subdivision (e), and is a dangerous drug pursuant to Business and Professions Code section 4022.

9. Tramadol (Ultram®) is a narcotic-like pain reliever used to treat severe pain. Tramadol has the potential for abuse. Tramadol is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and Professions Code section 4022.

10. Oxycodone (Oxaydo®, OxyCONTIN®, Oxyfast®, Roxicodon®, Xtampza ER®) is a white odorless crystalline powder derived from an opium alkaloid. It is a pure agonist opioid whose principal therapeutic action is analgesia. Other therapeutic effects of Oxycodone include anxiolysis, euphoria and feelings of relaxation. Oxycodone has a high potential for abuse. Oxycodone is a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code, and is a Schedule II controlled substance as defined by Section 1308.12 (b)(1) of Title 21 of the code of Federal Regulations. It is also a dangerous drug as defined in Business and Professions Code section 4022. Respiratory depression is the chief hazard from all opioid agonist preparations. Oxycodone should be used with caution and started in a reduced dosage (1/3 to ½ of the usual dosage) in patients who are concurrently receiving other central nervous system depressants including sedatives or hypnotics, general anesthetics, phenothiazines, other tranquilizers and alcohol.

11. Percocet® (oxycodone and acetaminophen) from the opioid class of medications, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and is a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed as indicated, it is used for the treatment of moderate to moderately severe pain. The Drug Enforcement Administration (DEA) has identified opioids, such as Oxycodone, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2011 Edition), at p. 41.)

12. Ambien® (zolpidem tartrate), a centrally acting hypnotic-sedative, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and Professions Code section 4022. When properly

prescribed as indicated, it is used for the short-term treatment of insomnia characterized by difficulties with sleep initiation.

13. Benzodiazepines are a class of agents that work on the central nervous system, acting on select receptors in the brain that inhibit or reduce the activity of nerve cells within the brain. They are a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and are classified as a dangerous drug pursuant to Business and Professions Code section 4022. Valium, diazepam, alprazolam, and temazepam are all examples of benzodiazepines.

FACTUAL ALLEGATIONS

14. PATIENT A[3]

a) Patient A was a 59 year-old female. She had a diagnosis of fibromyalgia, systemic lupus, rheumatoid arthritis, headache, other sleep disturbances, symptomatic menopause, acute reaction to stress, anxiety disorder, attention deficit hyperactivity disorder, essential hypertension, and psoriasis. According to the records provided, Respondent was her primary care physician from approximately 2017 to 2019.

b) There is no documented patient education regarding respiratory depression and opiate use. There is no patient education documented regarding concurrent use of benzodiazepines and opiates.

c) In 2016, there is a documented discussion between Patient A and Respondent regarding a pain management referral while she was taking a morphine milligram equivalent (MME) of 40 per day, but the Continuity of Care documentation referral was never made. On October 7, 2016, Respondent stopped Patient A's Tramadol prescription and started Norco 325/10 mg with 60 pills per month. Respondent then increased Norco to 120 pills per month on November 14, 2016. On February 1, 2017, Respondent stopped Patient A's Norco prescription and instead prescribed Patient A Percocet 325/10 mg with 120 pills per month.

[3] For the sake of patient privacy, the patients concerned are designated only as "Patient A" or "Patient B." Their identity is known to all parties involved.

d) In 2016, Patient A attended counseling for a three-month period, but did not continue. Respondent documented a neurology consult referral for Patient A, but there is no documentation that it occurred or was sent. As a part of Patient A's disability paperwork, Respondent noted the following life functions were affected: caring for oneself, performing manual tasks, working, remembering, and reasoning. Patient A eventually received permanent disability. Respondent neither referred Patient A to psychiatry nor documented involving any caregivers or family member's involvement. Considering Patient A was prescribed a high dosage of opioids with concomitant use of clonazepam, Patient A's memory issues should have been further evaluated by a specialist.

e) In May of 2017, Patient A was diagnosed with opioid dependence in a medical record notation. After this diagnosis, Respondent documented that Patient A's condition was "stable." In April of 2017, Respondent stopped Percocet and began prescribing oxycodone HCl 15 mg with 120 pills per month. However, in June of 2017, Respondent began prescribing both Percocet and oxycodone HCl concomitantly. Patient A's opioid dependence was not further addressed and did not appear to be "stable."

f) In 2017, after Respondent increased Patient A's MME from 90 to 150, Patient A still complained of daily body aches and pain. Respondent prescribed Patient A oxycodone 15 mg with a quantity of 120 pills per month (90 MME per day). Respondent then added Percocet 325/10 mg with a quantity of 120 pills per month concomitantly with the oxycodone prescription (equating to a total of 150 MME per day). While Patient A's diagnosis of Rheumatoid Arthritis does provide some justification for prescribing a dosage of opioids greater than 90 MME equivalents per day, the risk of Respondent prescribing 150 MME per day does not outweigh the benefits. Patient A's pain was not being properly managed in the primary care setting.

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g) On September 26, 2018, Patient A had an office visit with Respondent complaining of knee pain and Respondent noted, ". . . knee is hurting more due to 5 days without her medication." Respondent further noted Patient A was experiencing fever, chills, night sweats, right ear pain, and a pulse of 120 beats per minute. Yet, Respondent did not evaluate Patient A for opioid dependence and instead diagnosed her with sinusitis without documenting any physical exam of the sinuses or ears.

15. PATIENT B

a) Patient B was a 68-year-old female suffering from chronic kidney disease, type 2 diabetes, history of stroke, dorsopathy, essential hypertension, multiple acute injuries, nicotine dependence, osteoarthritis of the knee, and mellitus without complication. According to the records provided, Respondent was her primary care physician from approximately 2017 to 2019.

b) On June 23, 2017, Respondent increased Patient B's oxycodone HCl from 60 pills per month to 90 pills per month.

c) In November of 2018, the Emergency Department made a recommendation for Patient B to attend pain management after diagnosing Patient B with narcotics dependency. However, Respondent did not refer Patient B to pain management until November of 2019. Respondent also notes in her medical records a discussion regarding behavior therapy in patient education, but she did not make any referrals for outpatient behavior therapy or psychiatry.

d) In 2019, Respondent was prescribing Patient B oxycodone and Norco, which totaled approximately 370 MME per day. In Patient B's April of 2019 visit with Respondent, she stated that her shoulder pain was "getting worse." According to Respondent's medical records, on April 9, 2019, she increased Patient B's Norco prescription from 325/10 mg with a quantity of 30 pills per month, to 120 pills per month, which increased her MME to 400 MME per day.

e) On November 25, 2019, Respondent noted that Patient B continued to have persistent lower abdominal pain at a pain scale of 10 out of 10. They also discussed

that Patient B takes more pain medication than she should and that Respondent spoke to her about it. Respondent continued to refill concomitantly Norco with 120 pills per month, oxycodone HCl with 90 pills per month, and Ambien 10 mg with 30 pills per month up to the last CURES record entry in September of 2019. These increases do not follow the "start low and go slow" guidelines.

f) Respondent performed multiple urine drug screens on Patient B, but failed to document why more than yearly urine drug screens were performed. In 2018, Respondent concomitantly prescribed Patient B Norco 325/10 mg with 30 pills per month and oxycodone HCl 80 mg with 90 pills each month. There were six urine drug screens performed in 2018 which showed Patient B was positive for opioids (e.g., hydrocodone), but negative for oxycodone. In 2019, Patient B's Norco prescription was increased from 30 tablets monthly to 120 tablets monthly, but four of the urine drug screens performed in 2019 showed as negative for opioids; Norco is an opioid.

CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

16. Respondent Silvia Margarita Diego, M.D. is subject to disciplinary action under section 2234, subdivision (c) of the Code, in that she committed repeated negligent acts in her care and treatment of Patient A and Patient B, which include, but are not limited to, the following circumstances (which are more particularly alleged in paragraphs 14 and 15 above, which are hereby realleged and incorporated by this reference as if fully set forth herein):

17. The standard of care is for a physician to document that education regarding the use of Naloxone was provided to patients at risk of an opioid-related overdose. Naloxone is recommended for patients on long-term, high dose opioids as it prevents and reverses overdose from opioid use.

a) Patient A was on long-term opioids (beginning in 2011, according to the provided medical records, and continuing to 2019). At one point, Patient A had a high dosage of opioids equating to approximately 150 MME per day. Respondent's failure to

document that she provided education regarding Naloxone to Patient A was a simple departure from the standard of care.

b) Patient B was on long-term opioids (beginning in 2017, according to the provided medical records, and continuing to 2019). Patient B had a high dosage of opioids equating to approximately 370 to 400 MME per day. Respondent's failure to document that she provided education regarding Naloxone to Patient B was a simple departure from the standard of care.

18. The standard of care when prescribing opioids for long-term use is that a urine drug screen should be performed annually, and significant or unexpected results should be confirmed, discussed with the patient, and documented in the file. Once confirmed, the physician should consult with an addiction medicine specialist or mental health specialist.

a) On October 5, 2019, there is documentation of one urine drug screen that is positive for alcohol and marijuana for Patient A. Respondent failed to confirm the urine drug screen results, failed to perform any substance abuse screening tools (e.g., CAGE-AID) or assessments, or consult with an addiction medicine specialist or mental health specialist. While there were in-house urine drug screens for Patient A, there is no documentation of this in Patient A's medical records. Respondent's failure to properly confirm the urine drug screen results, document Patient A's medical record regarding urine drug screens, or consult with an addiction medicine specialist or mental health specialist, were simple departures from the standard of care.

b) Patient B's urine screening results yielded the following unexpected results: 1) in 2018, six results were negative for oxycodone while Patient B was prescribed oxycodone with 90 pills each month; and 2) in 2019, Respondent increased Patient B's Norco prescription from 30 to 120 tablets monthly, yet four urine drug screens were negative for opioids. Respondent failed to document that these inconsistent urine drug screen results were consistently discussed with Patient B, which is a simple departure from the standard of care.

19. The standard of care requires evaluation for opioid dependence or opioid use disorder when physicians prescribe long-term opioid therapy and use of screening tools to screen for risk of opioid use disorder.

a) Patient A was diagnosed with opioid dependence in a 2017 medical record notation. Respondent's failure to address and document Patient A's physical opioid dependence, perform an opioid risk tool to screen for opioid dependence, and to consider beginning any therapy (e.g., MAT) for opioid dependence was a simple departure from the standard of care.

b) Patient B was diagnosed with narcotics dependence in a 2018 Emergency Department visit. Respondent's failure to timely address and document Patient B's narcotic dependence, perform an opioid risk tool to screen for opioid dependence, and to consider beginning any therapy (e.g., MAT) for opioid dependence was a simple departure from the standard of care.

20. The standard of care requires appropriate medical justification for prescribing greater than 90 MME per day for chronic pain, with a careful justification based on diagnosis and on an individualized assessment of benefits and risks. A patient is nine times more likely to experience a drug overdose when taking over 100 MME per day.

a) Respondent's failure to provide appropriate medical justification for prescribing Patient A 150 MME per day and properly balance the risks and benefits was a simple departure from the standard of care.

b) Respondent's failure to provide appropriate medical justification for prescribing Patient B 370 to 400 MME per day, as there is no medical justification for such a long-term high dosage, was a simple departure from the standard of care.

21. The standard of care requires that when starting opioids for chronic pain, the lowest effective dosage should be prescribed and titrated slowly.

a) Respondent failed to titrate Patient B's opioid prescriptions for OxyCodone and Norco slowly, which was a simple departure from the standard of care.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 54944, issued to Silvia Margarita Diego, M.D.;

2. Revoking, suspending or denying approval of Silvia Margarita Diego, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Silvia Margarita Diego, M.D., to pay the Board the costs of the investigation and enforcement of this action, and 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: AUG 30 2022

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

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