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

In the Matter of the Third Amended Accusation Against: Edward Albert G. Balbas, M.D. Physician's and Surgeon's Certificate No. A 89036 Respondent.	Case No. 800-2016-026363

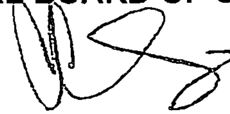
DECISION

The attached Proposed Decision 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 12, 2023.

IT IS SO ORDERED May 11, 2023.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Third Amended Accusation Against:

EDWARD ALBERT G. BALBAS, M.D.

Physician's and Surgeon's Certificate A 89036,

Respondent.

Agency Case No. 800-2016-026363

OAH No. 2022050938

PROPOSED ORDER

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 15 and 16, 2023.

Robert W. Lincoln, III, Deputy Attorney General, represented complainant Reji Varghese, Interim Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Mary Chen, Esq., Doyle Schafer McMahon, represented respondent Edward Albert G. Balbas, M.D., who was present at the hearing.

The Administrative Law Judge received evidence and heard argument. The record closed and the matter was deemed submitted on March 16, 2023.

SUMMARY

Complainant seeks to discipline respondent's medical license based on (1) his criminal conviction stemming from his role in a medical insurance fraud scheme and (2) his false answers to two questions in an application seeking certification to provide clinical services. Complainant proved by clear and convincing evidence respondent was convicted of two counts of violating Penal Code section 549, enabling insurance fraud, which is a crime substantially related to the qualifications, functions, and duties of a physician. Complainant also proved by clear and convincing evidence respondent gave false answers to two questions contained in an application for clinical privileges. However, complainant failed to prove those answers were dishonest or intentionally deceptive. Respondent proved he has served his patients well since his arrest and complied with the Board-ordered restrictions on his license. Despite respondent's rehabilitative efforts, the Board is statutorily bound under Business and Professions Code (Code) section 2273, subdivision (b), to revoke respondent's medical license based on his two-count conviction for violating Penal Code section 549.

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FACTUAL FINDINGS

License History, Jurisdiction, and Disciplinary History

1. The Board issued Physician's and Surgeon's Certificate Number A89036 (license) to respondent on August 9, 2002. At all times relevant herein, the license was in full force and effect. The license is scheduled to expire on August 31, 2024.

2. On a date not established by the record, William Prasifka, former Executive Director of the Board, filed an Accusation against respondent. On September 20, 2019, respondent timely filed a Notice of Defense, requesting a hearing. Former Executive Prasifka then filed a First Amended Accusation, signed on June 15, 2021, and a Second Amended Accusation, signed on August 15, 2021, against respondent.

3. Complainant brought the Third Amended Accusation on March 9, 2023. The Third Amended Accusation seeks to discipline respondent's license based on his guilty pleas to violating Penal Code section 549, his alleged participation in an insurance fraud scheme, and his alleged dishonesty in his application for clinical privileges with a health care system. (Exhibit 24.)

Respondent's Criminal Conviction

PLEA AND SENTENCING

4. On May 17, 2017, respondent signed and filed a Felony Plea Form in case number RIF1604500 filed in the Superior Court of California, County of Riverside. (Exhibit 7.) According to the Felony Plea Form, respondent agreed to enter a guilty plea to the following charges: two counts of violating Penal Code section 549 (enabling fraudulent insurance claims) and one count of an aggravated white-collar

crime enhancement under Penal Code section 186.11, subdivision (a)(2) (sentencing enhancement for pattern of fraud). Respondent also acknowledged he did the things stated in the charges to which he pleaded guilty. (*Id.* at p. A80.) The Felony Plea Form provided respondent's guilty pleas were conditioned on receiving formal probation for five years, serving 180 days in county jail, and paying restitution of $657,367.81. (*Ibid.*) As a further condition of his plea agreement, respondent agreed to assist law enforcement and the Office of the District Attorney of Riverside County (Riverside District Attorney) in prosecuting his co-defendants Jon Brunelle (Brunelle) and Alejandra Brunelle (Alejandra). (Exhibit 11.) As part of his cooperation with the Riverside District Attorney, respondent testified for the grand jury against his co-defendants on a date not made known in the record. (Exhibit 10.)

5. On February 24, 2023, the court sentenced respondent based on the Felony Plea Form filed on May 17, 2017. The court placed respondent on formal probation for 24 months (until February 23, 2025) with terms and conditions and ordered him to be committed to the custody of the Riverside County Sheriff for 180 days, with credit for 90 days of actual time served (presentence) and 90 days under Penal Code section 4019, for a total of 180 days. (Exhibit 20, p. A345; Exhibit 21, p. A357.) Complainant offered no evidence respondent has violated any term or condition of his court-ordered probation.

Respondent's Crimes

6. On April 29, 2014, the California Department of Insurance (DOI) Fraud Division received a fraud referral from Blue Shield of California (BSC) involving insurance claims submitted by Corona Physical Medicine (CPM) under respondent's name. On November 13, 2014, Anthem Blue Cross (Anthem) filed a similar referral

regarding CPM and respondent. The insurance claims at issue were received by BSC and Anthem between July 2011 and December 2012.

7. DOI conducted an investigation of CPM in which its investigators researched CPM's corporate history, reviewed CPM and respondent's emails and files, and interviewed CPM officers, employees, and patients. DOI's findings are reflected in two reports dated August 31, 2016, and September 6, 2016, respectively. (Exhibits 4 and 5.) Respondent did not dispute the contents of the reports. The reports along with respondent's testimony before the grand jury (exhibit 10), which his testimony at the administrative hearing largely mirrored, describe the context and nature of respondent's misconduct and the fraud committed by his co-defendants.

8. Respondent met Brunelle, a licensed chiropractor, in 2010 while respondent was working full-time at Crown City Rehabilitation Institute (Crown Rehabilitation). Brunelle was offering massages during a marketing event at a carwash respondent frequented, and respondent received a massage at the event. (Exhibit 10, p. A88.) Respondent then went to Brunelle's clinic to receive additional massages. Respondent testified to the grand jury Brunelle knew he was a physician because he wore scrubs with his name and specialty to his massage appointments. (*Ibid.*)

9. In late 2010, Brunelle asked respondent whether he wanted to make extra money by performing nerve conduction studies on a part-time basis at Brunelle's clinic. (Exhibit 10, pp. A88–A89.) Respondent agreed to work two evenings a week for two hours each evening after he finished his full-time work at another clinic. Brunelle then told respondent they had to incorporate as a medical and chiropractic clinic with respondent as the majority owner to allow respondent to work part-time. Once incorporated, the clinic then would obtain a fictitious name permit from the Board. (*Id.*

at pp. A89, A91.) Brunelle also told respondent he would receive no money based on his ownership share in the medical corporation. (*Id.* at p. A94.)

10. Brunelle hired an attorney to draw up the required papers, including the articles of incorporation for Balbas Medical Professional Corporation doing business as CPM. (Exhibit 10, pp. A90–A91.) On February 8, 2011, CPM filed as a medical corporation under the name of Balbas Medical PC with the California Secretary of State. (Exhibit 4, p. A29.) Respondent held 51 percent ownership of the company; Brunelle held 49 percent. CPM's Articles of Incorporation state the officers of the corporation were Brunelle, Chief Executive Officer and Secretary, and respondent, Chief Financial Officer. The Articles of Incorporation Brunelle provided to respondent differed from those filed with the Secretary of State in that they did not state respondent was the Chief Financial Officer of CPM. Respondent did learn of his title until after DOI raided CPM. (Exhibit 10, pp. A92–A94.)

11. During respondent's employment at CPM, CPM consisted of one medical doctor, i.e., respondent, and two or three chiropractors. (Exhibit 10, p. A89.) CPM advertised itself as a chiropractic center offering chiropractic care, holistic medical care, acupuncture, massage therapy, nutritional counseling, hydration therapy, food allergy testing, and medical weight loss. (Exhibit 4, p. A29.) Respondent's work at CPM was limited to giving pain injections, providing pain management care, and conducting nerve conduction studies. Under his agreement with Brunelle and CPM, respondent was paid an annual salary of $36,000 for his services plus $300 for each nerve conduction study he performed. Respondent did not share in CPM's profits. (Exhibit 10, pp. A89–A90.)

12. During the relevant period, Brunelle was also the owner of Brunelle Management Inc. (Brunelle Management). Brunelle Management performed the

staffing, billing, and payroll tasks for CPM. Brunelle's wife, Alejandra, was CPM's office manager and was responsible for CPM's billing. (Exhibit 5, pp. A52–A53.) At the time he joined CPM, respondent understood Brunelle to be in charge of all administrative work for the clinic and the overall chiropractic decisions while respondent was to control the medical decisions. (*Id.* at p. A95.) However, respondent also understood Brunelle controlled what medical services were to be provided at CPM because Brunelle, not CPM, purchased the equipment or materials to perform any medical procedures. (*Ibid.*) Because of his limited hours at CPM, respondent never considered himself an owner of CPM; he viewed Brunelle as his boss and himself as a part-time employee. (*Id.* at pp. A96–A97.)

13. In 2011, at Brunelle's urging, respondent and CPM chiropractors started recommending a test for food intolerances or allergies called ALCAT to their patients. ALCAT testing was considered a diagnostic medical service because it required a patient's blood to be drawn. (Exhibit 10, p. A109.) At CPM, a medical assistant would obtain a blood sample from the patient. (Exhibit 5, p. A55.) CPM then would ship the patient's blood sample to a laboratory located in Florida for testing. Once the laboratory completed the testing, it would send a report back to CPM.

14. CPM paid the Florida laboratory $312.50 to $625 to test each patient's blood samples. CPM then sought reimbursement from the patient's insurance carrier for the test under respondent's name because a chiropractor could not supervise blood work. (See Exhibit 10, p. A88.) CPM's insurance claims indicated CPM performed the ALCAT laboratory work, and CPM charged the insurance companies $4,256 for the testing. The insurance claims were fraudulent because they did not disclose the Florida laboratory had tested the blood samples and misrepresented the actual amount CPM was charged for the laboratory work. DOI found CPM marked up the ALCAT laboratory

fees in claims to BCS for 24 patients, Anthem for 110 patients, Cigna for 18 patients, and Aetna for 13 patients. DOI estimated the insurance overpayments as a result of CPM's markup scheme totaled approximately $381,425 for tests performed from July 2011 through September 2014. (Exhibit 4, pp. A28–A31.)

15. Respondent was unaware of how much CPM charged the insurance carriers for the ALCAT test or how much CPM paid the Florida laboratory to analyze a patient's blood sample. (Exhibit 10, p. A110.) He did not have access to the ALCAT billings, had no access to CPM's mailbox, lacked a CPM office key, and was unaware of any insurance company inquiries or investigations regarding CPM's billing practices. He did not learn of the insurance billing issues until CPM was raided.

16. Respondent never requested to review CPM's billing for medical services. He trusted the Brunelles, and he assumed their billing was accurate. (Exhibit 10 at p. A111.) In his interview with the DOI investigators, respondent asserted he was unaware of the Brunelles' fraudulent billing practices. DOI investigators' review of respondent's email records obtained through a DOI search warrant supported respondent's assertions. The DOI investigators found the emails revealed respondent had minimal contact with anyone from CPM. (Exhibit 5, p. A60.) There was little or no mention of ALCAT testing in respondent's emails, and no discussion with Brunelle or anyone else at CPM regarding ALCAT or insurance claim billing. (*Ibid.*)

FELONY COMPLAINT AND BAIL

17. On September 12, 2016, as a result of the DOI findings, the Riverside District Attorney filed a felony complaint (2016 felony complaint) against respondent, Brunelle, and Alejandra. The 2016 felony complaint charged the three defendants with five counts of filing fraudulent health insurance claims between July 27, 2011, through

December 22, 2014, in violation of Penal Code section 550, subdivision (a)(6), a felony, and five counts of unlawfully charging additional fees for services not rendered from July 27, 2011, through December 22, 2014, in violation of Code section 655.5, subdivision (c), a felony. The 2016 felony complaint also alleged respondent engaged in a pattern of felony conduct, as defined in Penal Code section 186.11, subdivision (a)(1), because he committed two or more related felonies involving fraud and the taking of more than $100,000. (Exhibit 3.) As part of respondent's felony plea, the counts charging respondent with violations of Penal Code section 550 and Code section 655.5, subdivision (c), were dropped, and two counts (Counts 13 and 14) alleging violations of Penal Code section 549, were added.

18. On January 27, 2017, as a condition of respondent's bail, the court placed several restrictions on respondent's medical practice for the pendency of the criminal action based on the 2016 felony complaint. The court permitted respondent to practice medicine while he was on bail provided he did not engage in solo practice; he did not bill for any laboratory medical services to patients or their insurance providers except for billing for EMG tests at respondent's place of employment; he appointed a billing monitor; and he did not associate with Brunelle or Alejandra. (Exhibit 13.)

Certification Application

19. On March 12, 2018, respondent applied to become a participating Pain Medicine and Rehabilitation physician for Kern Health Systems (KHS), a managed care health plan. At the time, respondent was working as a pain management doctor at LAGS Spine & Sports Care Medical Centers Inc. (LAGS). LAGS had a credentialing department that assisted its doctors in submitting applications to become credentialed healthcare providers for KHS and other healthcare organizations.

20. On November 1, 2018, respondent submitted answers to several questions contained in a part of the KHS application titled "Attestation Questions." (Exhibit 17, p. A160.) Respondent and the LAGS credentialing department both worked on this section of the application but respondent was responsible for approving the application before its submission. Respondent affirmed the truth and correctness of the answers to the best of his knowledge and belief by signing the Attestation. (*Ibid.*)

21. In response to the Attestation questions, respondent acknowledged his license to practice medicine was restricted and he had been convicted of a crime. He also offered details of the restrictions and his criminal conviction on a separate sheet as requested.

22. The Attestation also asked the following questions:

> B. Have you ever been charged, suspended, fined, disciplined, or otherwise sanctioned, subjected to probationary conditions, restricted or excluded, or have you voluntarily or involuntarily relinquished eligibility to provide services or accepted conditions on your eligibility to provide services, for reasons related to possible incompetence or improper professional conduct, or breach of contract or program conditions by Medicare, Medicaid, or any public program, or is any such action pending?
>
> C. Have your clinical privileges, membership, contractual participation or employment by any medical organization (e.g. hospital medical staff, medical group, independent practice association (IPA), health plan, health maintenance

> organization (HMO), preferred provider organization (PPO), private payer (including those that contract with public programs), medical society, professional association, medical school faculty position or other health delivery entity or system), ever been denied, suspended, restricted, reduced, subject to probationary conditions, revoked or not renewed for possible incompetence, improper professional conduct or breach of contract, or is any such action pending?

On November 1, 2018, respondent answered "No" to each of the questions. (Exhibit 17, p. A160.)

23. Respondent's answers to Questions B and C were false. On October 30, 2017, respondent was suspended from participating in the California Worker's Compensation System. (Exhibit 17, p. A204.) On December 18, 2017, Rancho Mirage Surgery Center terminated or revoked respondent's clinical privileges indefinitely because of his criminal convictions. (Exhibit 8.) Thus, contrary to his answers to Questions B and C, respondent had been excluded from providing medical services to a public program and also had his clinical privileges suspended by a medical group because of improper professional conduct.

Interim Suspension Order

24. On December 29, 2022, complainant's request for an Interim Suspension Order (ISO) against respondent's license was granted. Respondent did not oppose the request. The ISO extended the court's restrictions on respondent's medical practice until the resolution of the Accusation filed in this case.

Respondent's Evidence

BACKGROUND

25. Respondent is married with a 12-year-old daughter. He currently specializes in physical medicine and rehabilitation with a subspecialty in pain management. He is a Diplomate of the American Board of Physical Medicine and Rehabilitation and of the American Board of Pain Medicine.

26. After graduating from medical school in the Philippines in 1996, respondent interned in internal medicine at Columbia University College of Physicians and Surgeons from 1999 to 2001. Following his internship, he was a resident in the Department of Physical Medicine and Rehabilitation at the Brody School of Medicine at East Carolina University in North Carolina and then a fellow in Interventional Pain Management and Sports Medicine at LAGS. (Exhibit A.)

27. After his fellowship, respondent worked at Kaiser Permanente Medical Center in Santa Rosa from July 31, 2006, to April 30, 2010. He then moved to Southern California and worked at Crown Rehabilitation from May 3, 2010, through December 20, 2013. While working at Crown Rehabilitation, respondent also worked at several other sports medicine and rehabilitation medical groups until December 31, 2015. After the felony complaint was filed, respondent began working at the Southern California Injury Treatment Center, where he currently remains employed, and at LAGS. His work primarily consists of outpatient office injections, spinal injections in a surgery center, nerve conduction studies, and the management of pain medications. (Exhibit A.) Respondent is paid on an hourly basis and does not participate in any patient or insurance billing.

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REHABILITATION AND MITIGATION

28. Other than the ISO issued in connection with this matter, respondent has no history of discipline by the Board. His criminal conviction in 2017 was his first and only criminal conviction. No evidence was presented regarding any job-related discipline of respondent.

29. At hearing, respondent repeatedly took responsibility for his crimes and asserted it was his fault for the false billings. He testified regarding his shame and embarrassment for his misconduct. Respondent acknowledged he knew Brunelle would be using his medical license number to bill for the ALCAT test. He also acknowledged it was his name on the CPM billing forms sent to the insurance carriers, and he was therefore ultimately responsible for the billing. He admitted he should have done a better job monitoring and supervising the billing as a part-owner of CPM. Respondent explained he pleaded guilty to Penal Code section 549 because he had acted recklessly by ignoring his billing responsibilities. Respondent testified he learned a "very painful lesson" as a result of his misconduct, and he now has a better idea of how a medical practice works. Since his arrest, he has not worked with any chiropractor and has no intention of doing so in the future.

30. Respondent also acknowledged his answers to the questions contained in the KMC application were false. He disputed complainant's claim that the false answers reflected dishonesty or deception. Respondent asserted at the time of the application, he was under significant stress and inundated with correspondence from insurers and others as a result of the ongoing criminal proceedings and the bail restrictions on his license. Respondent acknowledged he did not take the time necessary to review his answers in the KMC application and wrongly assumed the LAGS credentialing department had checked the answers to make sure they were

correct. Respondent testified LAGS was aware of his suspension from Rancho Mirage Surgery Center and his inability to practice for the Workers' Compensation Board, but neither he nor the credentialing department caught the mistaken answers. He recognized the ultimate responsibility, however, was his, and he vowed to be more careful in the future.

31. Respondent has thus far complied with the requirements of his formal criminal probation. He completed 90 days of curfew compliance without incident. (Exhibit S.) He assisted the Riverside District Attorney in recovering the entire restitution amount ($657,367.81) from the Brunelles. No evidence was presented of any violation by respondent of the restrictions placed on his medical licenses by the court or as part of the ISO.

32. Respondent completed the PBI Medical Ethics and Professionalism Course on November 19 and 20, 2022. (Exhibit B.) He also completed the PBI Medical Record Keeping Course held on November 5 and 6, 2022. (Exhibit C).

EVIDENCE OF GOOD CHARACTER

33. Respondent submitted numerous letters from his neighbors and colleagues in support of his licensure. (Exhibits D–R, T.) Each of the letter writers was aware of respondent's criminal conviction. His neighbors and friends praised respondent's ethics, trustworthiness, integrity, and sound character.

34. Respondent's colleagues praised his work ethic, professionalism, dedication to his patients, and compassion. Darren Bergey, M.D., an orthopedic spine surgeon who worked with respondent at the Back and Sports Institute from 2015 to 2017, was "thoroughly impressed by his exceptional qualities as a physician." (Exhibit E.) Clinton E. Faulk, M.D., who was a resident with respondent at the Brody School of

Medicine, observed respondent "demonstrated very good communication skills, and his patients trusted his care in that he was acting in their best interest daily." (Exhibit H.) Tedmund Po, M.D., wrote respondent is "highly passionate and empathic" and "dedicated to providing the best possible care for his patients and always goes the extra mile to ensure their well-being." (Exhibit F.) He too praised respondent's professionalism and ethical conduct.

35. Three witnesses at the administrative hearing attested to respondent's good character. Each was aware of respondent's status as a convicted felon and the allegations contained in the Third Amended Accusation. Each testified neither respondent's criminal convictions nor the Board's claims had altered their opinions of respondent.

36. Daniel Tripp worked as respondent's medical scribe for approximately five years starting in 2015. As respondent's scribe, Mr. Tripp had the opportunity to intimately observe how respondent treated his patients. According to Mr. Tripp, respondent was an "excellent doctor" who had a "great way" with his patients. He described respondent as a good listener who takes time with his patients. Mr. Tripp observed nothing in respondent's medical practices that would raise any safety concerns.

37. Francisco Badar, M.D., has known respondent since medical school. He currently is a family medicine doctor whose practice is geographically close to respondent's place of work. Dr. Badar has referred his patients in need of pain management to respondent, and he has received positive feedback from those patients regarding their interactions with respondent. Dr. Badar also has worked with respondent at the Orange County Research Institute from 2019 to the present. In a letter to the Board dated February 1, 2023, Dr. Badar notes respondent's "exceptional

qualities as a research physician," his compassion, moral character, "deep concern for the well-being of his patients," and unwavering "commitment to ethical conduct and honesty." (Exhibit J.)

38. Isaac Riveroy, D.D.S., is the owner of Southern Personal Injury Center, where respondent has worked for the past six years. Dr. Riveroy is aware of the court-ordered and Board restrictions placed on respondent's practice. Dr. Riveroy considers respondent to be a "very good doctor" who "really cares about his patients." Dr. Riveroy testified respondent has been candid about his background and court issues. He has no concerns about respondent's honesty. According to Dr. Riveroy, the Center's patients repeatedly request to be treated by respondent, and respondent "puts in every effort to attend" to those patients' needs. Dr. Riveroy testified the care of those patients will suffer if respondent loses his license. In his letter to the Board dated February 3, 2023, Dr. Riveroy states he has been "consistently impressed with [respondent's] unwavering dedication to providing the highest quality care to patients" and notes his "remarkable compassion," integrity, and honesty. (Exhibit R.)

Costs

39. Complainant submitted a declaration of Deputy Attorney General Robert W. Lincoln, III, and a computer spreadsheet in support of his request for reimbursement of $33,641.25 in prosecution costs. According to the declaration and spreadsheet, the Department of Justice (DOJ) billed the Board for $30,981.25 in actual costs incurred in prosecuting this matter. The declaration also states that an additional $2,660 of attorney and paralegal costs are estimated to have been incurred from March 3, 2023, through the date of the administrative hearing on this matter, consisting of 10 hours of the Deputy Attorney General's time and two hours of

paralegal time. The incurred costs sought consist of costs incurred in connection with the ISO hearing on December 29, 2022, and the instant administrative hearing.

40. Regarding the ISO, the DOJ spreadsheet states its services cost $14,238.75, consisting of 57.50 hours of attorney time totaling $12,650, and 7.75 hours of paralegal time totaling $1,588.75. The spreadsheet also indicates four attorneys and three paralegals worked on the ISO.

41. Regarding the administrative hearing, the DOJ spreadsheet states its services cost $16,742.50, consisting of 64 hours of attorney time totaling $14,080, and 12.75 hours of paralegal time totaling $2,613.75. The spreadsheet also indicates three attorneys and four paralegals worked on the matter.

42. Respondent is the sole wage earner in his family and the sole financial support for his 12-year-old daughter. Practicing medicine is the only job he has held since graduating from medical school, and he has no source of other income. Because of the restrictions imposed on his license, his income was insufficient to cover his legal bills and he was forced to borrow money to pay for his criminal defense.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving the charges in the accusation are true. The standard of proof required is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to prove charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or

sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Law

2. The Board is responsible for the enforcement of the disciplinary provisions of the Medical Practice Act. (Code, § 2004.)

3. The Board may discipline a licensee for unprofessional conduct. (Code, § 2234.) Unprofessional conduct includes the violation of any provision of the Medical Practice Act or the commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician. (Code, § 2234, subd. (a), (e).)

4. Unprofessional conduct also includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician. (Code, § 2236.) A crime is considered to be substantially related to the qualifications, functions, or duties of a licensee if to a substantial degree "it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1360.) The record of conviction is conclusive evidence only of the fact the conviction occurred. (Code, § 2236, subd. (a).) A guilty plea is deemed to be a criminal conviction. (Code, § 2236, subd. (d).)

5. It is unlawful for licensees to charge, bill, or solicit payment for any clinical laboratory service not actually rendered by the person or clinical laboratory under their direct supervision unless the patient, client, or customer is apprised at the first time of the billing or charge of the name, address, and charges of the clinical laboratory performing the service. (Code, § 655.5, subd. (a).) A licensee shall also not

charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge or bill. (Code, § 655.5, subd. (c).) Additionally, it is unprofessional conduct to present a false or fraudulent insurance claim or prepare any writing to present or use in support of a false or fraudulent claim. (Code, § 810, subd. (a).)

6. Unprofessional conduct also includes knowingly making or signing any document directly or indirectly related to the practice of medicine which falsely represents the existence or non-existence of a state of facts. (Code, § 2261.)

First Cause for Discipline

7. Complainant proved by clear and convincing evidence respondent was convicted of violating two counts of Penal Code section 549 with an aggravated white collar crime enhancement within the meaning of Penal Code section 186.11, subdivision (a)(2). (Factual Findings 4–5.) Health insurance fraud causes harm to the healthcare system by increasing healthcare costs unnecessarily. Physicians are responsible for ensuring the billing done under their names is truthful and compliant with the law. Enabling health insurance fraud therefore is a crime substantially related to the qualifications, duties, and functions of a physician. Cause exists to discipline respondent's license under Code section 2236 and California Code of Regulations, title 16, section 1360, based on respondent's criminal convictions for violating Penal Code section 549. (Legal Conclusions 1–4.)

Second Cause for Discipline

8. Complainant did not prove by clear and convincing evidence respondent knowingly committed fraud against BSC, Anthem, Cigna, and Aetna. Penal Code section 549 makes it a crime "to knowingly, or with reckless disregard for the truth,"

solicit, accept, or refer a client who intends to file a fraudulent claim for insurance benefits. (*People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 813.) Under the Penal Code, the "word 'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of [the Penal Code]. It does not require any knowledge of the unlawfulness of such act or omission." (Pen. Code, § 7, subd. (5).) While respondent's recklessness may have permitted the Brunelles' fraudulent acts, there was insufficient evidence demonstrating respondent had knowledge of the Brunelles' billing activities or participated in the fraudulent billings. The DOI reports support respondent's contention he had no such knowledge, and no evidence was presented showing respondent participated in or profited from any fraudulent billing. (Factual Findings 6–16.) Respondent pleaded guilty to Penal Code section 549 because he recklessly disregarded CPM's billing practices. (Factual Finding 29.) His plea was not an admission he knew the Brunelles were filing false claims. Cause therefore does not exist to discipline respondent's license for the knowing commission of fraud under Code sections 655.5 and 810 and Penal Code section 549. (Legal Conclusions 1, 2, & 5.)

Third Cause for Discipline

9. Complainant did not prove by clear and convincing evidence respondent acted dishonestly or corruptly in connection with CPM's fraudulent scheme. No evidence was presented showing respondent was involved in any conspiracy to defraud insurers as alleged in the Third Amended Accusation. (Factual Findings 6–16.) Respondent's guilty plea was predicated on his lack of vigilance and his reckless disregard for CPM's billing practices. (Factual Finding 29.) Cause therefore does not exist to discipline respondent's license under Code section 2234, subdivision (e), because there is insufficient evidence to demonstrate respondent committed any

dishonest or corrupt act in connection with his work at CPM. (Legal Conclusions 1, 2, 5, & 8.)

Fourth Cause for Discipline

10. Complainant proved by clear and convincing evidence respondent submitted two false answers to questions posed in his credentialing application to KMS. (Factual Findings 19–23.) Complainant did not prove by clear and convincing evidence respondent's answers were dishonest. (Factual Finding 30.) The Code does not define dishonesty. According to Merriam-Webster Dictionary, dishonesty is characterized by a lack of honesty or integrity or a disposition to defraud or deceive. (www.merriam-webster.com/dictionary/dishonesty.) Complainant did not offer clear or convincing evidence respondent intended to deceive KMS by answering two questions falsely. Respondent's explanation for his mistaken answers was credible, particularly considering he alerted KMS to his criminal convictions. Cause therefore does not exist to discipline respondent's license under Code section 2234, subdivision (c), because there was insufficient proof respondent's answers stemmed from dishonesty instead of carelessness. However, cause exists to discipline respondent's license for unprofessional conduct under Code section 2261 because he knowingly signed a document containing a false answer as part of an application seeking clinical privileges. (Legal Conclusions 1, 5, 6.)

Fifth Cause for Discipline

11. Complainant proved by clear and convincing evidence respondent engaged in unprofessional conduct by recklessly ignoring his professional obligations as part-owner of CPM and by failing to carefully scrutinize his application answers before submitting them to KMS. Respondent's conduct also violated provisions of the

Medical Practice Act as set forth above. Cause therefore exists to discipline respondent's license under Code section 2234 for unprofessional conduct. (Factual Findings 6–23; Legal Conclusions 1–3, 6, 7, 10.)

Disposition

12. Respondent provided persuasive evidence of rehabilitation. (Factual Findings 28–38.) He took full responsibility and expressed genuine remorse for his misconduct. Since his arrest, he has provided excellent care to his patients in compliance with the restrictions imposed on his practice by the court and by the Board. He voluntarily took courses on medical ethics and recordkeeping to ensure he understood his ethical obligations to the Board and his patients. He has the full support of his colleagues and friends.

13. Under Code section 2273, subdivision (b), the Board is required to revoke the license of a licensee who is convicted of more than one count of violating Penal Code section 549. Evidence of rehabilitation is irrelevant, and revocation is not dependent on whether the licensee's acts were knowing or a result of reckless conduct. The statute further provides that after the expiration of the 10-year period, the licensee may file an application for license reinstatement pursuant to Code section 2307.

14. Here, respondent was convicted of two counts of violating Penal Code section 549. Section 2273, subdivision (b), provides no discretion to impose a lesser penalty than revocation for a period of 10 years. Accordingly, the statute requires respondent's license to be revoked for a period of 10 years.

15. At hearing, respondent asserted Code section 2273, subdivision (b), was inapplicable because a new version of the statute became effective in 2022. However,

the section's legislative history indicates the 2022 revisions made only nonsubstantive gender changes and inserted the phrase regarding the stipulation to a license surrender. The language regarding revocation of the license upon conviction for violating Penal Code section 549 was added in 2000, well before respondent's guilty plea and criminal conviction. (See Sen. Bill No. 1988 (1999–2000 Reg. Sess.).) Thus, Code section 2273 applies to respondent's criminal conviction.

Costs

16. Under Code section 125.3, complainant is entitled to recover the reasonable costs of prosecution and enforcement of this matter. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought. These factors include: 1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra,* 29 Cal.4th at p. 45.)

17. Complainant requests reimbursement of $33,641.25 for prosecution costs. (Factual Findings 39–41.) The requested costs are unreasonable under two of the *Zuckerman* factors. Complainant's costs incurred in prosecuting the ISO are unreasonable considering the ISO extended a stipulation based on court-ordered restrictions. (Factual Finding 24.) Thus, the use of four attorneys and three paralegals to pursue the ISO was excessive. The costs incurred in prosecuting the Accusation were likewise excessive. Three attorneys and four paralegals worked on the matter. The bulk of the Accusation was devoted to respondent's criminal convictions, for which

complainant relied exclusively on court documents and DOI reports. No witnesses were called to support the allegations. Respondent's earning capacity will also suffer after his license is revoked. His income has already been curtailed by the restrictions imposed on his practice, and he was forced to borrow money to pay his legal bills. (Factual Finding 42.) Accordingly, the requested costs shall be reduced by 80 percent, for a total of $6,728.25, payable upon reinstatement of respondent's license.

ORDER

1. Physician's and Surgeon's Certificate Number A89036 issued to respondent Edward Albert G. Balbas, M.D., is hereby revoked for 10 years commencing on the effective date of this decision pursuant to Business and Professions Code section 2273, subdivision (b). After expiration of this 10-year period, respondent may apply for reinstatement pursuant to Business and Professions Code section 2307.

2. Respondent shall pay costs of $6,728.25 upon reinstatement of his license.

DATE: 04/10/2023

CINDY F. FORMAN
Administrative Law Judge
Office of Administrative Hearings