

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

**In the Matter of the Accusation
Against:**

Raphael Tomas Malikian, M.D.

**Physician's and Surgeon's
Certificate No. A 159422**

Respondent.

Case No. 800-2020-064409

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 4, 2024.

IT IS SO ORDERED September 27, 2024.

MEDICAL BOARD OF CALIFORNIA



**Reji Varghese
Executive Director**

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CATHERINE B. KIM
Deputy Attorney General
4 State Bar No. 201655
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6246
6 Facsimile: (916) 731-2117
E-mail: Catherine.Kim@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 800-2020-064409

12 **RAPHAEL TOMAS MALIKIAN, M.D.**
20405 Fort Tejon Road
13 Llano, CA 93544-1558

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Physician's and Surgeon's Certificate**
No. A 159422,

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16 Respondent.

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

20 **PARTIES**

21 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
22 California (Board). He brought this action solely in his official capacity and is represented in this
23 matter by Rob Bonta, Attorney General of the State of California, by Catherine B. Kim, Deputy
24 Attorney General.

25 2. RAPHAEL TOMAS MALIKIAN, M.D. (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about November 9, 2018, the Board issued Physician's and Surgeon's Certificate No. A 159422 to Respondent. That license expired on November 30, 2022, and has not been renewed.

JURISDICTION

4. Accusation No. 800-2020-064409 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2020-064409 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2020-064409. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2020-064409, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 159422 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

10. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board “shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license.”

11. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A 159422 without further notice to, or opportunity to be heard by, Respondent.

12. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

13. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the

1 Executive Director on behalf of the Board does not, in his discretion, approve and adopt this
2 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
3 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
4 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
5 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
6 by the Executive Director on behalf of the Board, Respondent will assert no claim that the
7 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
8 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
9 of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

11 14. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
12 herein to be an integrated writing representing the complete, final and exclusive embodiment of
13 the agreements of the parties in the above-entitled matter.

14 15. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
15 Order, including copies of the signatures of the parties, may be used in lieu of original documents
16 and signatures and, further, that such copies shall have the same force and effect as originals.

17 16. In consideration of the foregoing admissions and stipulations, the parties agree the
18 Executive Director of the Board may, without further notice to or opportunity to be heard by
19 Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

20 **ORDER**

21 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 159422,
22 issued to Respondent RAPHAEL TOMAS MALIKIAN, M.D., is surrendered and accepted by
23 the Board.

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

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2020-064409 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$11,520.50 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2020-064409 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$11,520.50 prior to issuance of a new or reinstated license.

ACCEPTANCE

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

DATED:

07/31/2024

Raphael Malikian
RAPHAEL TOMAS MALIKIAN, M.D.
Respondent

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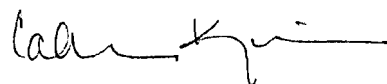
ENDORSEMENT

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

DATED: 08/05/2024

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



CATHERINE B. KIM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2020-064409

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 CATHERINE B. KIM
Deputy Attorney General
4 State Bar No. 201655
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6246
6 Facsimile: (916) 731-2117
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11 In the Matter of the Accusation Against:

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12 **RAPHAEL TOMAS MALIKIAN, M.D.**
20405 Fort Tejon Road
13 Llano, CA 93544-1558

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
No. A 159422,

15 Respondent.
16

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19 **PARTIES**

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

23 2. On or about November 9, 2018, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 159422 to Raphael Tomas Malikian, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate expired on November 30, 2022, and has not been 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 2004 of the Code states:

6 The board shall have the responsibility for the following:

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

9 (b) The administration and hearing of disciplinary actions.

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

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

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

14 (f) Approving undergraduate and graduate medical education programs.

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

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

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

19 5. Section 2220 of the Code states:

20 Except as otherwise provided by law, the board may take action against all
21 persons guilty of violating this chapter. The board shall enforce and administer this
22 article as to physician and surgeon certificate holders, including those who hold
23 certificates that do not permit them to practice medicine, such as, but not limited to,
retired, inactive, or disabled status certificate holders, and the board shall have all the
powers granted in this chapter for these purposes including, but not limited to:

24 (a) Investigating complaints from the public, from other licensees, from health
25 care facilities, or from the board that a physician and surgeon may be guilty of
unprofessional conduct. The board shall investigate the circumstances underlying a
26 report received pursuant to Section 805 or 805.01 within 30 days to determine if an
interim suspension order or temporary restraining order should be issued. The board
27 shall otherwise provide timely disposition of the reports received pursuant to Section
805 and Section 805.01.

28 (b) Investigating the circumstances of practice of any physician and surgeon
where there have been any judgments, settlements, or arbitration awards requiring the

1 physician and surgeon or his or her professional liability insurer to pay an amount in
2 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with
3 respect to any claim that injury or damage was proximately caused by the physician's
4 and surgeon's error, negligence, or omission.

5 (c) Investigating the nature and causes of injuries from cases which shall be
6 reported of a high number of judgments, settlements, or arbitration awards against a
7 physician and surgeon.

8 6. Section 2227 of the Code states:

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

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

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

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

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

22 (5) Have any other action taken in relation to discipline as part of an order of
23 probation, as the board or an administrative law judge may deem proper.

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

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

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

STATUTORY PROVISIONS

8. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with

unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board no later than 30 calendar days after being notified by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

(h) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the board or the Department of Consumer Affairs, Health Quality Investigation Unit.

(i) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

9. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the

licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

10. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the Respondent is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the Respondent is a licensee, and the clerk shall record prominently in the file that the Respondent holds a license as a physician and surgeon.

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

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

11. Section 2236.1 of the Code states:

(a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Medical Board

1 shall, immediately upon receipt of the certified copy of the record of conviction,
2 determine whether the certificate of the physician and surgeon has been automatically
3 suspended by virtue of his or her incarceration, and if so, the duration of that
4 suspension. The division shall notify the physician and surgeon of the license
5 suspension and of his or her right to elect to have the issue of penalty heard as
6 provided in this section.

7 (b) Upon receipt of the certified copy of the record of conviction, if after a
8 hearing it is determined therefrom that the felony of which the licensee was convicted
9 was substantially related to the qualifications, functions, or duties of a physician and
10 surgeon, the Medical Board shall suspend the license until the time for appeal has
11 elapsed, if no appeal has been taken, or until the judgment of conviction has been
12 affirmed on appeal or has otherwise become final, and until further order of the
13 division. The issue of substantial relationship shall be heard by an administrative
14 law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the
15 division, in the discretion of the division.

16 (c) Notwithstanding subdivision (b), a conviction of any crime referred to in
17 Section 2237, or a conviction of Section 187, 261, 288, or former Section 262, of the
18 Penal Code, shall be conclusively presumed to be substantially related to the
19 qualifications, functions, or duties of a physician and surgeon and no hearing shall be
20 held on this issue. Upon its own motion or for good cause shown, the board may
21 decline to impose or may set aside the suspension when it appears to be in the interest
22 of justice to do so, with due regard to maintaining the integrity of and confidence in
23 the medical profession.

24 (d) (1) Discipline may be ordered in accordance with Section 2227, or the
25 Medical Board may order the denial of the license when the time for appeal has
26 elapsed, the judgment of conviction has been affirmed on appeal, or an order granting
27 probation is made suspending the imposition of sentence, irrespective of a subsequent
28 order under Section 1203.4 of the Penal Code allowing the person to withdraw the
plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or
dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the
Medical Quality Hearing Panel sitting alone or with a panel of the board, in the
discretion of the board. The hearing shall not be had until the judgment of conviction
has become final or, irrespective of a subsequent order under Section 1203.4 of the
Penal Code, an order granting probation has been made suspending the imposition of
sentence; except that a licensee may, at the licensee's option, elect to have the issue
of penalty decided before those time periods have elapsed. Where the licensee so
elects, the issue of penalty shall be heard in the manner described in this section at the
hearing to determine whether the conviction was substantially related to the
qualifications, functions, or duties of a physician and surgeon. If the conviction of a
licensee who has made this election is overturned on appeal, any discipline ordered
pursuant to this section shall automatically cease. Nothing in this subdivision shall
prohibit the division from pursuing disciplinary action based on any cause other than
the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a
transcript of the testimony therein, may be received in evidence.

(f) The other provisions of this article setting forth a procedure for the
suspension or revocation of a physician and surgeon's certificate shall not apply to
proceedings conducted pursuant to this section.

12. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

13. Section 2241.5 of the Code states:

(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under their treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

...

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of a person with substance use disorder.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

...

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

...

14. Section 2242 of the Code states:

(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

1 (b) No licensee shall be found to have committed unprofessional conduct within
2 the meaning of this section if, at the time the drugs were prescribed, dispensed, or
3 furnished, any of the following applies:

4 (1) The licensee was a designated physician and surgeon or podiatrist serving in
5 the absence of the patient's physician and surgeon or podiatrist, as the case may be,
6 and if the drugs were prescribed, dispensed, or furnished only as necessary to
7 maintain the patient until the return of the patient's practitioner, but in any case no
8 longer than 72 hours.

9 (2) The licensee transmitted the order for the drugs to a registered nurse or to a
10 licensed vocational nurse in an inpatient facility, and if both of the following
11 conditions exist:

12 (A) The practitioner had consulted with the registered nurse or licensed
13 vocational nurse who had reviewed the patient's records.

14 (B) The practitioner was designated as the practitioner to serve in the absence
15 of the patient's physician and surgeon or podiatrist, as the case may be.

16 (3) The licensee was a designated practitioner serving in the absence of the
17 patient's physician and surgeon or podiatrist, as the case may be, and was in
18 possession of or had utilized the patient's records and ordered the renewal of a
19 medically indicated prescription for an amount not exceeding the original prescription
20 in strength or amount or for more than one refill.

21 (4) The licensee was acting in accordance with Section 120582 of the Health
22 and Safety Code.

23 15. Section 2242.1 of the Code states:

24 (a) No person or entity may prescribe, dispense, or furnish, or cause to be
25 prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined
26 in Section 4022, on the Internet for delivery to any person in this state, without an
27 appropriate prior examination and medical indication, except as authorized by Section
28 2242.

(b) Notwithstanding any other provision of law, a violation of this section may
subject the person or entity that has committed the violation to either a fine of up to
twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by
the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to
collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax
Board, upon notification by the Attorney General or the board of a final judgment in
an action brought under this section, shall subtract the amount of the fine or awarded
civil penalties from any tax refunds or lottery winnings due to the person who is a
Respondent in the action using the offset authority under Section 12419.5 of the
Government Code, as delegated by the Controller, and the processes as established by
the Franchise Tax Board for this purpose. That amount shall be forwarded to the
board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this
section is not a resident of this state, a violation of this section shall, if applicable, be

1 reported to the person's or entity's appropriate professional licensing authority.

2 (f) Nothing in this section shall prohibit the board from commencing a
3 disciplinary action against a physician and surgeon pursuant to Section 2242 or
4 2525.3.

5 16. Section 725 of the Code states:

6 (a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or
7 administering of drugs or treatment, repeated acts of clearly excessive use of
8 diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or
9 treatment facilities as determined by the standard of the community of licensees is
10 unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist,
11 physical therapist, chiropractor, optometrist, speech-language pathologist, or
12 audiologist.

13 (b) Any person who engages in repeated acts of clearly excessive prescribing or
14 administering of drugs or treatment is guilty of a misdemeanor and shall be punished
15 by a fine of not less than one hundred dollars (\$100) nor more than six hundred
16 dollars (\$600), or by imprisonment for a term of not less than 60 days nor more than
17 180 days, or by both that fine and imprisonment.

18 (c) A practitioner who has a medical basis for prescribing, furnishing,
19 dispensing, or administering dangerous drugs or prescription controlled substances
20 shall not be subject to disciplinary action or prosecution under this section.

21 (d) No physician and surgeon shall be subject to disciplinary action pursuant to
22 this section for treating intractable pain in compliance with Section 2241.5.

23 17. Section 2261 of the Code states:

24 Knowingly making or signing any certificate or other document directly or
25 indirectly related to the practice of medicine or podiatry which falsely represents the
26 existence or nonexistence of a state of facts, constitutes unprofessional conduct.

27 REGULATORY PROVISIONS

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

(a) For the purposes of denial, suspension or revocation of a license pursuant to
Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime,
professional misconduct, or act shall be considered to be substantially related to the
qualifications, functions or duties of a person holding a license if to a substantial
degree it evidences present or potential unfitness of a person holding a license to
perform the functions authorized by the license in a manner consistent with the public
health, safety or welfare. Such crimes, professional misconduct, or acts shall include
but not be limited to the following: Violating or attempting to violate, directly or
indirectly, or assisting in or abetting the violation of, or conspiring to violate any
provision of state or federal law governing the applicant's or licensee's professional
practice.

(b) In making the substantial relationship determination required under subdivision
(a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the crime;

1 (2) The number of years elapsed since the date of the crime; and

2 (3) The nature and duties of the profession.

3 **COST RECOVERY**

4 19. Section 125.3 of the Code states:

5 (a) Except as otherwise provided by law, in any order issued in resolution of a
6 disciplinary proceeding before any board within the department or before the
7 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
8 administrative law judge may direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
10 investigation and enforcement of the case.

11 (b) In the case of a disciplined licensee that is a corporation or a partnership, the
12 order may be made against the licensed corporate entity or licensed partnership.

13 (c) A certified copy of the actual costs, or a good faith estimate of costs where
14 actual costs are not available, signed by the entity bringing the proceeding or its
15 designated representative shall be prima facie evidence of reasonable costs of
16 investigation and prosecution of the case. The costs shall include the amount of
17 investigative and enforcement costs up to the date of the hearing, including, but not
18 limited to, charges imposed by the Attorney General.

19 (d) The administrative law judge shall make a proposed finding of the amount
20 of reasonable costs of investigation and prosecution of the case when requested
21 pursuant to subdivision (a). The finding of the administrative law judge with regard
22 to costs shall not be reviewable by the board to increase the cost award. The board
23 may reduce or eliminate the cost award, or remand to the administrative law judge if
24 the proposed decision fails to make a finding on costs requested pursuant to
25 subdivision (a).

26 (e) If an order for recovery of costs is made and timely payment is not made as
27 directed in the board's decision, the board may enforce the order for repayment in any
28 appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or
reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

(h) All costs recovered under this section shall be considered a reimbursement
for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

1 (i) Nothing in this section shall preclude a board from including the recovery of
2 the costs of investigation and enforcement of a case in any stipulated settlement.

3 (j) This section does not apply to any board if a specific statutory provision in
4 that board's licensing act provides for recovery of costs in an administrative
5 disciplinary proceeding.

6 FACTUAL ALLEGATIONS

7 20. On or about August 6, 2021, Respondent was indicted in the United States District
8 Court, the Central District of California, in the criminal matter of *United States of America v.*
9 *Raphael Tomas Malikian*, Case No. CR 21-00359-DSF, on 11 counts of violating sections of the
10 Controlled Substances Act¹ for distribution of controlled substances between April 29, 2020 and
11 July 31, 2020. On or about April 19, 2023, a first superseding indictment (FSI) was filed
12 charging Respondent with 18 counts of conduct perpetrated between approximately December
13 28, 2019 and August 11, 2021 in violation of title 18 of the United States Code section 2(a),² and
14 title 21 of the United States Code sections 841(a)(1),³ 841(b)(1)(C),⁴ and 843(a)(3),⁵ among
15 others.

16 21. On or about September 26, 2023, Respondent entered into a Plea Agreement in which
17 he admitted to all facts set forth herein, and on or about October 16, 2023, Respondent pleaded
18 guilty to counts four and fifteen of the FSI, which charged Respondent with aiding and abetting
19 the acquisition of a controlled substance (Promethazine with codeine⁶) by fraud in violation of 21
20 U.S.C. § 843(a)(3) and 18 U.S.C. § 2(a) (count four) and distribution of oxycodone⁷ in violation
21 of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) (count fifteen).

22 ¹ 21 U.S.C. §§ 801-904.

23 ² 18 U.S.C. § 2(a) states: Whoever commits an offense against the United States or aids,
24 abets, counsels, commands, induces or procures its commission, is punishable as a principal.

25 ³ 21 U.S.C. § 841(a)(1) states: Except as authorized by this subchapter, it shall be
26 unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or
27 possess with intent to manufacture, distribute, or dispense, a controlled substance.

28 ⁴ 21 U.S.C. § 841(b)(1)(C) states: Except as otherwise provided ..., any person who
violates subsection (a) of this section shall be sentenced as follows: In the case of controlled
substances

⁵ 21 U.S.C. § 843(a)(3): It shall be unlawful for any person knowingly or intentionally to
acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery,
deception, or subterfuge.

⁶ Promethazine with codeine is a cough medicine with opioid classified as a Schedule V
controlled substance under the CSA and Title 21 of the Code of Federal Regulations.

⁷ Oxycodone is a highly addictive narcotic opioid classified as a Schedule II controlled
substance under the CSA and Title 21 of the Code of Federal Regulations.

1 22. On or about March 4, 2024, judgment was imposed on Respondent. The judgment
2 included a term of imprisonment of 37 months, to be followed by a period of supervised release
3 for a period of three years with terms and conditions that included prohibition against the practice
4 of medicine or prescription or manufacture of medication, drugs or analogues. Respondent was
5 ordered to surrender to Bureau of Prisons by no later than May 6, 2024, and is currently
6 incarcerated at the Duluth Federal Prison Camp, 4464 Ralston Drive, Duluth, Minnesota 55811,
7 Register No. 59799-509.

8 23. The circumstances leading to Respondent's conviction are as follows:

9 24. From no later than approximately December 28, 2019 and continuing until on or
10 about August 11, 2021, Respondent operated a medical clinic called Happy Family Medicine
11 ("HFM"). HFM was advertised as being located at a coworking space in Hollywood, California,
12 but primarily offered telehealth services. Respondent was the sole physician working for HFM.

13 25. During all relevant times, while operating and working for HFM, Respondent issued
14 prescriptions for controlled substances to customers without first obtaining the person's full
15 medical history, conducting a physical examination, requiring medical testing, or utilizing
16 diagnostic tools. Respondent did not verify his customers' identities before prescribing controlled
17 substances, and Respondent allowed customers to obtain prescriptions in the names of others.

18 26. Respondent worked with co-conspirators, who provided Respondent with false
19 names, addresses, dates of birth, and Respondent issued controlled substance prescriptions
20 accordingly, which the co-conspirators then filled and re-sold on the black market. Many of the
21 fraudulent controlled substance prescriptions issued by Respondent contained notes on the
22 prescriptions or accompanying documentation that falsely urged pharmacies not to verify such
23 prescriptions because medications were emergently needed and/or the failure to dispense could be
24 life threatening due to the COVID-19 pandemic.

25 27. Specifically, on or about April 5, 2020, co-conspirator 1 ("CC-1") texted Respondent
26 with a list of false names, dates of birth, and addresses, including for fictitious patient "Wyatt
27 Kent." Along with the false patient information for Wyatt Kent, CC-1 texted Respondent the
28 address of a pharmacy location where CC-1 wanted Respondent to send the promethazine with

1 codeine prescription and texted the following fabricated set of symptoms: "cough keeping him up
2 all nite [sic], heavy nausea and congestion, having symptoms about a week with phlegm." After
3 receiving this text message from CC-1 and without verifying Wyatt Kent's identity or conducting
4 a telehealth appointment with or a medical examination of Wyatt Kent, Respondent directed his
5 HFM staff to draft a promethazine with codeine prescription for Wyatt Kent and to create a HFM
6 medical chart for him. HFM's medical chart for "Wyatt Kent" listed CC-1 as the "caregiver" and
7 contained a diagnosis of COVID-19.

8 28. On or about April 5, 2020, Respondent signed and issued prescription number 958648
9 for 240 milliliters of promethazine with codeine for "Wyatt Kent" and the prescription was faxed
10 to a pharmacy in Arlington, Texas. The prescription stated on it: "Of medical necessity. Patient
11 risks exhaustion due to cough."

12 29. The prescription was dispensed to CC-1 the following day on or about April 6, 2020.
13 At all relevant times, Respondent knew that Wyatt Kent was a fictitious patient and acted with the
14 intent to facilitate CC-1's acquisition of the controlled substance prescription through
15 misrepresentation, fraud, deception, and subterfuge.

16 30. Respondent issued hundreds of similar false prescriptions for promethazine with
17 codeine during this time period and directed them to be sent to various pharmacies across the
18 nation for co-conspirators to obtain, which totaled approximately 82,330 mL of 6.25-10 mg/5 mL
19 of promethazine with codeine, a Schedule V controlled substance.

20 31. In a text message to CC-1, Respondent advised that he was working on obtaining a
21 medical license in Texas. CC-1 texted in response that they would both be millionaires when that
22 happened, and Respondent replied, in part, "Turn that m on the side made it a billion."

23 32. Respondent also issued a series of controlled substance prescriptions from April to
24 July 2020, to a person he believed was customer M.P., but, who, in fact, was an undercover law
25 enforcement officer, and issued each of the controlled substance prescriptions to M.P. without
26 conducting proper medical evaluations of M.P. or verifying M.P.'s identity, and without first
27 requesting additional testing or utilizing any diagnostic tools:

- 28 • 42 pills of 10 mg oxycodone (Schedule II) on April 29, 2020;

- 240 ml of 6.25-10 mg/5ml of Promethazine with codeine (Schedule V) on April 29, 2020;
- 180 pills of 10 mg oxycodone (Schedule II) on May 26, 2020;
- 300 pills of 10 mg oxycodone (Schedule II) on June 15, 2020; and
- 180 pills of 10 mg oxycodone (Schedule II) on July 7, 2020.

33. In addition, Respondent issued a series of controlled substance prescriptions from May to July 2020, to a person he believed was customer C.M., but, who, in fact, was an undercover law enforcement officer, and issued each of the controlled substance prescriptions to C.M. without conducting proper medical evaluations of C.M. or verifying C.M.'s identity, and without first requesting additional testing or utilizing any diagnostic tools:

- 42 pills of 10-325 mg Norco, which equates to 420 mg of hydrocodone (Schedule II) on May 15, 2020;
- 60 pills of 1 mg alprazolam (Schedule IV) on May 15, 2020;
- 42 pills of 10-325 mg Norco, which equates to 420 mg hydrocodone (Schedule II) on June 12, 2020;
- 60 pills of 1 mg alprazolam (Schedule IV) on June 12, 2020;
- 150 pills of 10-325 mg Norco, which equates to 1,500 mg hydrocodone (Schedule II) on July 31, 2020; and
- 60 pills of 2 mg alprazolam on July 31, 2020.

34. At all relevant times, Respondent knew the substances he was distributing to M.P. and C.M. were federally controlled and Respondent's actions in issuing the aforementioned controlled substance prescriptions to M.P. and C.M. was outside the scope of professional practice and without a legitimate medical purpose.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

35. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under sections 490 and 2236, subdivision (a), of the Code and California Code of Regulations, title 16, section 1360, in that Respondent has been convicted of crimes substantially related to the

1 qualifications, functions, or duties of a physician as more particularly set forth in paragraphs 20
2 through 34, which are incorporated herein by reference as if fully set forth.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Violation of Drug Statutes)**

5 36. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
6 section 2238 of the Code in that Respondent committed unprofessional conduct when he violated
7 sections 841 and 843 of title 21 of the United States Code as more particularly alleged in
8 paragraphs 20 through 34, which are incorporated herein by reference as if fully set forth.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Prescribing Without Prior Examination)**

11 37. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
12 sections 2242 and 2242.1, subdivision (a), of the Code in that Respondent prescribed, dispensed,
13 and furnished dangerous drugs on the internet without prior examination as more particularly set
14 forth in paragraphs 20 through 34, which are incorporated herein by reference as if fully set forth.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Prescribing Without Medical Indication)**

17 38. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
18 sections 2242 and 2242.1, subdivision (a), of the Code in that Respondent prescribed, dispensed,
19 and furnished dangerous drugs on the internet without medical indication as more particularly set
20 forth in paragraphs 20 through 34, which are incorporated herein by reference as if fully set forth.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Excessive Prescribing)**

23 39. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
24 section 725, subdivision (a), of the Code in that Respondent repeatedly prescribed clearly
25 excessive amounts of controlled substances without prior examination or medical indication as
26 more particularly set forth in paragraphs 32 through 34, which are incorporated herein by
27 reference as if fully set forth.

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonest or Corrupt Acts)**

3 40. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
4 sections 2234, subdivision (e), and 2261 of the Code in that Respondent committed dishonest
5 and/or corrupt acts by creating medical charts and issuing fraudulent prescriptions for fictitious
6 patients including but not limited to "Wyatt Kent" as more particularly set forth in paragraphs 20
7 through 31, which are incorporated herein by reference as if fully set forth.

8 **SEVENTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct)**

10 41. Respondent Raphael Tomas Malikian, M.D. is subject to disciplinary action under
11 sections 2234 of the Code in that Respondent has engaged in unprofessional conduct. The
12 circumstances are as follows:

13 42. The allegations of the First, Second, Third, Fourth, Fifth, And Sixth Causes for
14 Discipline are incorporated herein by reference as if fully set forth.

15 **PRAYER**

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

18 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 159422,
19 issued to Respondent Raphael Tomas Malikian, M.D.;

20 2. Revoking, suspending or denying approval of Respondent Raphael Tomas Malikian,
21 M.D.'s authority to supervise physician assistants and advanced practice nurses;

22 3. Ordering Respondent Raphael Tomas Malikian, M.D., to pay the Board the costs of
23 the investigation and enforcement of this case, and if placed on probation, the costs of probation
24 monitoring; and

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

DATED: JUL 25 2024



REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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