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

In the Matter of the Accusation Against:	)	
MIGUEL MORAN, P.A.	)	**Case No. 950-2015-000657**
Physician Assistant License No. PA 11298	)	
Respondent	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Physician Assistant Board, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 1, 2017.

IT IS SO ORDERED November 1, 2017.

PHYSICIAN ASSISTANT BOARD

By: Robert E. Sachs

Robert E. Sachs, P.A., Chair

XAVIER BECERRA
Attorney General of California
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Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MIGUEL MORAN, P.A.** **8530 LEMORAN AVE** **PICO RIVERA , CA** **90660-5412** **Physician Assistance License No. PA11298** Respondent.	Case No. 950-2015-000657 OAH No. 2017040630 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Physician Assistant Board of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Maureen L. Forsyth (Complainant) is the Executive Officer of the Physician Assistant Board (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Richard D. Marino, Deputy Attorney General.

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2. Respondent MIGUEL MORAN, P.A. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: Bonne, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071

3. On or about February 22, 1983, the Board issued Physician Assistance License No. PA11298 to MIGUEL MORAN, P.A. (Respondent). The Physician Assistance License was in full force and effect at all times relevant to the charges brought in Accusation No. 950-2015-000657, and will expire on October 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 950-2015-000657 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 1, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 950-2015-000657 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 950-2015-000657. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 950-2015-000657.

10. Respondent agrees that his Physician Assistance License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician Assistance License No. PA11298 issued to Respondent MIGUEL MORAN, P.A. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. CONTROLLED DRUGS-MAINTAIN RECORD Respondent shall maintain a record of all controlled substances administered, transmitted orally or in writing on a patient's

record or handed to a patient by the respondent during probation showing all the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, 4) the indications and diagnosis for which the controlled substance was furnished, and 5) the name of supervising physician prescriber.

Respondent shall keep these records at the worksite in a separate file or ledger, in chronological order, and shall make them available for immediate inspection and copying by the Board or its designee, on the premises at all times during business hours, upon request and without charge.

The supervising physician shall review, sign, and date the controlled substances record daily.

2. **EDUCATION COURSE** Within 60 days of the effective date of the decision, respondent shall submit to the Board or its designee for its prior approval an educational program or course from an accredited program which shall not be less than 15 hours of Category 1 CME. The education course shall be aimed at correcting any areas of deficient practice or knowledge. The course shall be Category I certified, limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first year of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

At least one course shall be required in pharmacology and appropriate drug orders.)

3. **ETHICS COURSE** Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval a course in ethics. The course shall be limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first year of probation.

Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the Board or its designee within 15 days after completing the course.

4. **PRESCRIBING PRACTICES COURSE** Within 60 calendar days of the effective

date of this decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

Respondent shall pay the cost of the course. The program shall determine whether respondent successfully completes the course.

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

5. **MAJOR VIOLATIONS** If respondent commits a major violation, respondent shall immediately upon notification by the Board, cease practice until notified otherwise in writing by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required CDE;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and,
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

6. **APPROVAL OF SUPERVISING PHYSICIAN** Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and

frequency of supervision to be provided. Respondent shall not practice until the supervising physician and practice plan are approved by the Board or its designee.

Respondent shall have the supervising physician submit quarterly reports to the Board or its designee.

If the supervising physician resigns or is no longer available, respondent shall, within 15 days, submit the name and license number of a new supervising physician for approval. Respondent shall not practice until a new supervising physician has been approved by the Board or its designee.

7. **NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN** Respondent shall notify his/her current and any subsequent employer and supervising physician(s) of the discipline and provide a copy of the Accusation, Decision, and Order to each employer and supervising physician(s) during his/her period of probation, before accepting or continuing employment. Respondent shall ensure that each employer informs the Board or its designee, in writing within 30 days, verifying that the employer and supervising physician(s) have received a copy of the Accusation, Decision, and Order.

This condition shall apply to any change(s) in place of employment.

The respondent shall provide to the Board or its designee the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervising physicians, and work site monitor, and shall inform the Board or its designee in writing of the facility or facilities at which the person practices as a physician assistant.

Respondent shall give specific, written consent to the Board or its designee to allow the Board or its designee to communicate with the employer, supervising physician, or work site monitor regarding the licensee's work status, performance, and monitoring.

8. **OBEY ALL LAWS** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine as a physician assistant in California, and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. **QUARTERLY REPORTS** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been

compliance with all the conditions of probation.

10. **OTHER PROBATION REQUIREMENTS** Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board and probation unit informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board and probation unit. Under no circumstances shall a post office box serve as an address of record, except as allowed by California Code of Regulations 1399.523.

Respondent shall appear in person for an initial probation interview with Board or its designee within 90 days of the decision. Respondent shall attend the initial interview at a time and place determined by the Board or its designee.

Respondent shall, at all times, maintain a current and renewed physician assistant license.

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

11. **INTERVIEW WITH MEDICAL CONSULTANT** Respondent shall appear in person for interviews with the Board's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

12. **NON-PRACTICE WHILE ON PROBATION** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not practicing as a physician assistant. Respondent shall not return to practice until the supervising physician is approved by the Board or its designee.

If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, respondent is required to immediately notify the Board in writing of the date of departure and the date of return, if any.

Practicing as a physician assistant in another state of the United States or federal jurisdiction while on active probation with the physician assistant licensing authority of that state or jurisdiction shall not be considered non-practice.

All time spent in a clinical training program that has been approved by the Board or its designee, shall not be considered non-practice. Non-practice due to a Board ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term.

Periods of non-practice do not relieve respondent of the responsibility to comply with the terms and conditions of probation.

It shall be considered a violation of probation if for a total of two years, respondent fails to practice as a physician assistant. Respondent shall not be considered in violation for non-practice as long as respondent is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. **UNANNOUNCED CLINICAL SITE VISIT** The Board or its designee may make unannounced clinical site visits at any time to ensure that respondent is complying with all terms and conditions of probation.

14. **CONDITION FULFILLMENT** A course, evaluation, or treatment completed after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of the condition.

15. **COMPLETION OF PROBATION** Respondent shall comply with all financial obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's license will be fully restored.

16. **VIOLATION OF PROBATION** If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke

probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. **COST RECOVERY** The respondent is hereby ordered to reimburse the Physician Assistant Board the amount of $ 8,000 in 16 equal installments, the first of which shall be due within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's costs for its investigation shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his/her responsibility to reimburse the Board for its investigative costs.

18. **PROBATION MONITORING COSTS** Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant Board and delivered to the Board no later than January 31 of each calendar year.

19. **VOLUNTARY LICENSE SURRENDER** Following the effective date of this probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request, in writing, the voluntarily surrender of respondent's license to the Board. Respondent's written request to surrender his or her license shall include the following: his or her name, license number, case number, address of record, and an explanation of the reason(s) why respondent seeks to surrender his or her license. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Respondent shall not be relieved of the requirements of his or her probation unless the Board or its designee notifies respondent in writing that respondent's request to surrender his or her license has been accepted. Upon formal acceptance of the surrender, respondent shall, within 15 days, deliver respondent's wallet and wall certificate to the Board or its designee and shall no longer practice as a physician assistant. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's

license shall be deemed disciplinary action. If respondent re-applies for a physician assistant license, the application shall be treated as a petition for reinstatement of a revoked license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq.. I understand the stipulation and the effect it will have on my Physician Assistance License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physician Assistant Board.

DATED: 9-19-17

MIGUEL MORAN, P.A.
Respondent

I have read and fully discussed with Respondent MIGUEL MORAN, P.A. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/19/17

PETER R. OSINOFF, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physician Assistant Board.

Dated: September 19, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

RICHARD D. MARINO
Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 950-2015-000657

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 7 2017
BY Robyn Fitzwater ANALYST

BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MIGUEL MORAN, P.A. 8530 Lemoran Avenue Pico Rivera, California 90660-5412 Physician Assistant License Number PA11298, Respondent.	Case No. 950-2015-000657 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board (Board).

2. On February 22, 1983, the Board issued Physician Assistant License Number PA11298 to Miguel Moran (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2017, unless renewed.

JURISDICTION

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

4. Section 3528 of the Code provides that any proceedings involving the suspension or revocation of the license of a physician assistant, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

5. Section 3531 of the Code provides, in pertinent part:

"A plea . . . of guilty . . . made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The board may order the license suspended or revoked . . . 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 allowing such person to withdraw his . . . plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

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

7. Section 493 of the Code provides, in pertinent part, that the board can suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

8. Section 3502.1 of the Code provides, in pertinent part, that (a) . . . while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to

supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication . . . pursuant to subdivisions (c) and (d).

"(b) . . . ."

"(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician and surgeon before it is filled or carried out. (1) A physician assistant shall not . . . issue a drug order for a drug . . . without advance approval from a supervising physician and surgeon for the particular patient. . . . . (2) A physician assistant may not . . . issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient . . . . (3) . . . ."

"(d) A written drug order issued pursuant to subdivision (a), . . . shall contain the printed name, address, and telephone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. . . . ."

"(e)(1)(2) . . . ."

"(f) . . . (g)."

9. Section 3527 of the Code provides, in pertinent part: "The board may order the . . . the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California."

"(b) . . . (e)."

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license . . . or by order or decision of the board . . . shall not deprive the board of jurisdiction to commence

or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

10. Section 2234 provides, in pertinent part, that the board shall take action against any licensee who is charged with unprofessional conduct for violating, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter, by the commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon or any action or conduct which would have warranted the denial of a certificate.

11. Section 2242 provides that prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

12. Section 4022 provides, in pertinent part that "Dangerous drug" means any drug unsafe for self-use in humans and includes any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import or any other drug that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

COST RECOVERY

13. Business and Professions Code section 125.3 states that:

"(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

"(b) . . . ."

"(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the

hearing, including, but not limited to, charges imposed by the Attorney General.

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

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

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

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

"(k) . . . ."

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CALIFORNIA CODE OF REGULATIONS

14. California Code of Regulations, Title 16, Section 1399.540, subdivision (a), provides, in pertinent part, a physician assistant may only provide those medical services which he is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

15. California Code of Regulations, Title 16, section 1399.525, provides, in pertinent part: "For the purposes of the . . . suspension or revocation of a license . . . , a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but are not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.

"(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.

"(c) . . . (d)."

"(e) Any crime or act involving the . . . furnishing of narcotics or dangerous drugs . . ., as defined in Section 4022 of the code.

"(f) . . . (i)."

16. California Code of Regulations, Title 16, section 1399.521 provides, in pertinent part:

"In addition to the grounds set forth in section 3527, subdivision (a), of the code the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes:

"(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon.

"(b) . . . (d)."

17. California Code of Regulations, Title 16, section 1399.521.5 (e)(1) and (3) provides, in pertinent part, that the failure to report to the board, within 30 days, the bringing of an information charging a felony against the licensee and the conviction of the licensee of any felony constitutes unprofessional conduct.

18. California Code of Regulations, Title 16, section 1399.545 provides, in pertinent part:

"(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

"(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

"(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

"(d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.

"(e) A physician assistant and his . . . supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:

"(1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;

"(2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;

"(3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms,

signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted from, or referenced to, texts or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) days. The physician shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;

"(4) . . . ."

"(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

UNITED STATES CODES

19. Title 21, United States Code, Section 2, provides that "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal" and that "Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

20. Title 21, United States Code, Section 321, provides, in pertinent part: "(g)(1) The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, . . . or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man . . . ; and (C) articles (other than food) intended to affect the structure or any function of the body of man . . . ;"

"(k) The term "label" means a display of written, printed, or graphic matter upon the

immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

"(l) . . . ."

"(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

"(n) If an article is alleged to be misbranded because the labeling . . . is misleading, then in determining whether the labeling . . . is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling . . . fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling . . . relates under the conditions of use prescribed in the labeling . . . thereof or under such conditions of use as are customary or usual.

"(o) . . . (aa)."

"(bb) The term "knowingly" or "knew" means that a person, with respect to information (1) has actual knowledge of the information, or (2) acts in deliberate ignorance or reckless disregard of the truth or falsity of the information."

"(cc) . . . (rr)."

21. Title 21, United States Code, Section 331(k), provides that the following acts and the causing thereof are prohibited: "The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded."

22. Title 21, United States Code, Section 333(a)(2), provides, in pertinent part that "if any person commits such a violation . . . with the intent to defraud or mislead, such person shall be

imprisoned for not more than three years or fined not more than $10,000, or both."

23. Title 21, United States Code, Section 353, subdivision (b) (1), provides, in pertinent part, that a drug intended for use by man which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug and such a drug shall be dispensed only upon a written prescription of a practitioner licensed by law to administer such drug, or upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related)

24. Respondent is subject to disciplinary action under section 3531, 490, 493, 2234(e) and (h), and Code of California Regulations, Title 16, Sections 1399.521.5 and 1399.525, in that he was convicted of one count of misbranding of drugs, in violation of Title 21, United States Code (U.S.C.), Sections 331(k), 333(a)(2) and 353(b)(1), a felony. The circumstances are as follows:

25. In or about November 2013, an Information entitled *United States of America vs. Miguel Moran*, was filed in the United States District Court for the District of Nevada, bearing case number 2:14-cr-0014-JCM-NJK, 5GN05013, charging Respondent with one count of misbranding while held for sale, in violation of Title 21, U.S.C., Sections 3331(k), 353(b)(1) and 333(a)(2), a felony offense, and one court for forfeiture of the gross proceeds pursuant to Title 18, U.S.C., Section 2. The circumstances are as follows:

26. TRNXS.NET, a telemarketing call center located in Las Vegas, Nevada, had its employees solicit and accept orders for prescription drugs. TRANXS.NET utilized non-medically trained employees to answer telephone calls from prospective customers, conduct interviews of the prospective customers about their medical history, convey information about prescription drugs, take orders for prescription drugs and ship the prescription drugs to customers

throughout the country. TRNXS.NET contracted with physicians and physician assistants around the country to review patient information obtained by their non-medically trained employees and authorized prescriptions for the drugs TRNXS.NET sold.

27. In or before February 2009, Respondent contracted with TRNXS.NET to review the patient customer information obtained by their non-medically trained employees via email communications. TRNXS.NET agreed to pay Respondent $8 for each patient's information he reviewed. Thereafter, Respondent would review the patient information and would approve a prescription for the perspective patient or would recommend that the patient see a physician. Prior to approving the prescription, Respondent: 1) failed to speak with the patient directly; 2) failed to verify the diagnosis the patient claimed to be suffering from; 3) failed to examine the patient; 4) failed to discuss treatment options and the benefits and risks of treatment with the patient; 5) failed to have a supervising physician for the TRNXS.NET customers; and 6) failed to have a supervising physician approve the prescriptions prior to their issuances.

28. On or about February 9, 2009, TRNXS.NET shipped 150 tablets of Carisoprodol[1] from Oklahoma to Georgia by UPS Second Day Air delivery pursuant to a prescription approved by Respondent. This prescription was invalid as Respondent failed to have a supervising physician for the TRNXS.NET customers, failed to conduct a face-to-face examination of the patient customer before issuing the prescription, failed to discuss treatment options and the risks and benefits of treatment with the patient customer, and failed to obtain approval from a supervising physician prior to issuing the prescription.

29. Respondent worked with TRNXS.NET in this capacity until 2011. By this time, TRNXS.NET had paid Respondent $56,032.00, for reviewing patient information and authorizing prescriptions.

30. On or about December 10, 2013, Respondent entered into and signed a plea memorandum wherein he plead guilty to Count One of the Criminal Information charging him

[1] Carisprodol, also commonly known by the brand names as Soma or Vanadom, a Schedule IV Controlled Substance muscle relaxer that works by blocking pain sensations between the nerves and the brain and is used together with rest and physical therapy to treat injuries and other painful musculoskeletal conditions.

with Misbranding, a felony, in violation of Title 21, U.S.C., Sections 331(k), 333(a)(2) and 353(b)(1). In the plea memorandum, Respondent admitted that he introduced prescription drugs into interstate commerce, the drugs were misbranded because they were dispensed without a valid prescription, and that he acted with intent to defraud or mislead. Thereafter, the court ordered Respondent to: 24-months of probation, with 6-months of home confinement; forfeiture of $56,032.00, the gross proceeds paid to Respondent by TRNXS.NET; a fine of $2,000.00; not possess illegal controlled substances; to refrain for any unlawful use of a controlled substance and submit with one drug test within 15-days of commencement of probation supervision and at least two periodic drug tests thereafter; submit to DNA collection and analysis; and to obey all laws in addition to some other conditions.

SECOND CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs Without a Physical Examination)

31. Respondent is subject to disciplinary action under section 2242(a) in that he prescribed dangerous drugs, to wit Carisoprodol, without an appropriate physical examination. The circumstances are as follows:

32. Paragraphs 25 through 30, inclusive, are incorporated by reference as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without a Supervising Physician)

33. Respondent is subject to disciplinary action under section 3502.1 and California Code of Regulations, Title 16, Section 1399.540, subdivision (a), in that he prescribed dangerous drugs, to wit Carisoprodol, without having a supervising physician who approved the prescription prior to its issuance. The circumstances are as follows:

34. Paragraphs 25 through 30, inclusive, are incorporated by reference as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Report the Filing of an Information and Conviction within Thirty Days)

35. Respondent is subject to disciplinary action under California Code of Regulations, Title 16, Section 1399.521.5, subdivision (e)(1) and (3) in that he failed to report his conviction to the Board within thirty days. The circumstances are as follows:

36. Paragraphs 25 through 30, inclusive, are incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician Assistant License Number PA11298, issued to Miguel Moran, P.A.;

2. Ordering Respondent to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: February 7, 2017

MAUREEN L. FORSYTH.
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California

Complainant

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