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

In the Matter of the Amended Accusation and Petition to Revoke Probation Against **Carlos Humberto Montenegro, M.D.** **Physician's and Surgeon's Certificate License No. A 48811** **Respondent.**	**Case No. 800-2015-012720**

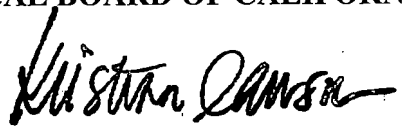
DECISION

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

This Decision shall become effective at 5:00 p.m. on May 22, 2020.

IT IS SO ORDERED: April 24, 2020.

MEDICAL BOARD OF CALIFORNIA



Kristina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Amended Accusation and Petition to Revoke Probation Against: CARLOS HUMBERTO MONTENEGRO, M.D. P. O. Box 94743 Pasadena, CA 91109 Physician's and Surgeon's Certificate No. A 48811, Respondent.	Case No. 800-2015-012720 OAH No. 2018030969.1 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (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 Colleen M. McGurrin, Deputy Attorney General.

2. Carlos Humberto Montenegro, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about October 22, 1990, the Board issued Physician's and Surgeon's Certificate

No. A 48811 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720, and will expire on August 31, 2020, unless renewed.

JURISDICTION

4. First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on October 31, 2018. Respondent timely filed his Notice of Defense contesting the Amended Accusation.

5. A copy of First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720. Respondent has also carefully read, 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 First Amended Accusation and Petition to Revoke Probation; 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended

Accusation and Petition to Revoke Probation No. 800-2015-012720, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the First Amended Accusation and Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the First Amended Accusation and Petition to Revoke Probation, and that Respondent hereby gives up his right to contest those charges.

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

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. 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.

14. 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.

15. 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 the term of four years of probation imposed on Physician's and Surgeon's Certificate No. A 48811 issued to Respondent Carlos Humberto Montenegro, M.D. by the Decision and Order in Case No. 22-2010-205575, effective April 16, 2014, a true copy of which is attached as Exhibit B, is extended for an additional two (2) years, continuing the practice monitor and educational course conditions therein, and adding the following terms and conditions. All other terms and conditions of said Decision and Order remain unchanged and unaffected.

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

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

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

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

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

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

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

3. ALCOHOL - ABSTAIN FROM USE: Respondent shall abstain completely from the use of products or beverages containing alcohol.

4. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon

who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process, that Respondent is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business

days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

5. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to

biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all of the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health

and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or

service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

7. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of

the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

8. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no

circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)

calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

9. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take

one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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ACCEPTANCE

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

DATED: 2/10/20

CARLOS HUMBERTO MONTENEGRO, M.D.
Respondent

ENDORSEMENT

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

Dated: 2/13/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

COLLEEN M. MCGURRIN
Deputy Attorney General

Attorneys for Complainant

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Exhibit A

First Amended Accusation and Petition to Revoke Probation No. 800-2015-012720

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO DECEMBER 31, 2018
BY ANALYST

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

In the Matter of the First Amended Accusation and Petition to Revoke Probation Against: **CARLOS HUMBERTO MONTENEGRO, M.D.** P. O. Box 94743 Pasadena, CA 91109 Physician's and Surgeon's Certificate No. A 48811, Respondent.	Case No. 800-2015-012720 **FIRST AMENDED ACCUSATION and PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 22, 1990, the Medical Board issued Physician's and Surgeon's Certificate Number A 48811 to Carlos Humberto Montenegro, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2020, unless renewed.

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3. On or about March 17, 2014, in a disciplinary action entitled *In the Matter of the Accusation Against Carlos Montenegro, M.D.* before the Medical Board of California, in Case Number 22-2010-205578, Respondent's certificate to practice medicine was revoked, the revocation was stayed and Respondent was placed on probation for four years effective April 16, 2014, with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This First Amended Accusation and Petition to Revoke Probation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

6. 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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2236 of the Code provides in pertinent part that a conviction which is substantially related to the function, qualifications or duties of a physician constitutes unprofessional conduct.

8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTS

PATIENT #1

9. Patient #1[1] was a patient under the care of Respondent from February 15, 2005, through November 11, 2014. Her medical records include diagnoses of depression, panic disorder, seizure disorder, hepatitis C, Attention Deficit Disorder (ADD), bipolar disorder, osteoporosis and hypothyroidism. Her record also includes a notation that she is mentally disabled, but no further information is given regarding this disability.

[1] Patients are anonymized to protect their privacy.

10. Patient #1 had a prescription for Methadone at 80 mg daily from another physician. She received prescriptions from Respondent for Clonazepam[2] 2 mg three times daily, Lorazepam[3] 2 mg nightly, Zocor[4] 20 mg daily, Actonel[5] 35 mg weekly, Synthroid[6] .05 mg, which was increased to .075 mg based on results of a thyroid test, and Adderall 20 mg twice daily for ADD, which was increased on May 10, 2008, to 20 mg three times daily. She was also prescribed Zoloft for depression in 2011.

11. There are forms from the Addiction Research and Treatment Clinic notifying Respondent that Patient #1 was on Methadone, but no discussion appears in the record as to why she was placed on this medication or being treated at the clinic.

12. On October 29, 2014, Patient #1 reported that she was unable to sleep on a prescription received for Ativan 2 mg 1½ tablets daily. This was increased to Ativan 2 mg 2 tablets nightly. A psychiatric consultation was ordered, but no consultation report appears in her records.

13. On November 18, 2014, a gastroenterology consultation was ordered to evaluate her liver based on the diagnosis of Hepatitis C, but no consultation report appears in her records.

14. Several forms from the Addiction Research and Treatment Clinic were sent to Respondent asking for confirmation of what controlled substances were prescribed for Patient #1. The form contains a notice that states: "Medications such as opiates, benzodiazepines and ones that affect CNS function can have addictive and potentially deleterious effects when combined with methadone. Misuse of any of these may affect his/her recovery."

PATIENT #2

15. Patient #2 was a patient under the care of Respondent from June 6, 2011, through February 10, 2012. His medical records include diagnoses of low back pain, hypertension, depression and anxiety.

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[2] Clonazepam is a benzodiazepine drug used to treat epilepsy, seizures and panic disorders.
[3] Lorazepam is a benzodiazepine drug used to control seizures.
[4] Zocor is an inhibitor used to lower cholesterol in the blood.
[5] Actonel is a bisphosphonate used to treat osteoporosis.
[6] Synthroid is used to treat hypothyroidism.

16. Respondent ordered X-rays of his back, but there is no record of the results.

17. On February 10, 2012, he was prescribed Viocdin ES and Ativan 1 mg nightly. The quantities are unknown since no prescription was included in the record and there is no indication in the records as to why Ativan was prescribed. If it was prescribed for anxiety, as is likely, no other non-benzodiazepine was recommended first.

18. Xanax was prescribed at 1 mg nightly without any indication as to why this was prescribed.

19. Respondent ordered a consultation with an orthopedic doctor but no consultation report appears in the records.

PATIENT #3

20. According to the records, Patient #3 was a patient under the care of Respondent from March 19, 2007, through May 14, 2015. Her medical records include diagnoses of Congestive Heart Failure, bipolar disorder, schizophrenia, hepatitis C, cirrhosis and polysubstance abuse.

21. Patient #3 was prescribed multiple benzodiazepines and stimulants, including Adderall three times daily, while on methadone. There is no note in her medical records as to why she was on methadone, although Patient #3 is noted as having a history of cocaine abuse.

22. The hospital records indicate that Patient #3 was hospitalized several times. Test reports indicate that she was admitted to Good Samaritan Hospital in August 2010 for bipolar/schizophrenia and fluid retention, and in September 2010 for Anasarca, hepatitis C and pneumonia. An admission record from the emergency room was included from May 23, 2011. She was hospitalized again from October 22, 2012, through November 3, 2012, for treatment of a laceration of the spleen. The notes also indicate that she was admitted to Pacific Alliance Medical Center in June 2013. No discharge summaries were included in her records.

23. The only admission report included is from May 23, 2011, when she was admitted to Good Samaritan Hospital for treatment of leg pain and edema.

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FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

24. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that Respondent was negligent in his care and treatment of three patients. The circumstances as follows:

25. Respondent was negligent in not prescribing the lowest possible dose of benzodiazepines to Patient #1, despite a warning about the possible addictive and potentially deleterious effects on her recovery when combined with use of methadone.

26. Respondent was negligent in prescribing Adderall 20 mg three times daily to Patient #3 for ADD despite her history of panic disorder, since Adderall can exacerbate panic disorder. Adderall also should not have been prescribed based on a statement in her chart that she had a problem with cocaine.

27. Respondent was negligent in prescribing Clonazepam and Adderall to Patient #1 together because of the risk of possible seizures and anxiety when these medications are combined.

28. Respondent was negligent in prescribing Clonazepam to Patient #1 instead of another non-addictive medication to treat seizures because of her known history of addiction.

29. Respondent was negligent in prescribing Lorazepam at night for sleep to Patient #1, because of her diagnosis of bipolar disorder and an existing prescription for Clonazepam three times daily.

30. Respondent was negligent in prescribing multiple benzodiazepines and stimulants to Patient #3 while she was on methadone. Respondent breached the standard of care in not prescribing the lowest possible dose of benzodiazepines to a patient on methadone, who also had a diagnosis of hepatitis.

31. Respondent was negligent in prescribing Ativan to Patient #2 without considering another non-benzodiazepine medication first.

32. Respondent was negligent in failing to chart why both Xanax and Ativan were prescribed to Patient #2.

33. Respondent was negligent in the treatment of Patients #1, 2 and 3 in prescribing benzodiazepines in combination with opiates without a record of discussing the possible complications these medications have when combined together.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

34. Respondent is subject to disciplinary action under Code section 2266, in that Respondent failed to maintain adequate and accurate records. The circumstances are as follows:

35. Respondent's records were inadequate since they did not show that he discussed the potential side effects and complications of combining opiates with benzodiazepines with any of the three patients; nor did the records show the numbers of medications and refills that were given.

36. The records did not record the reason why Patient #1 was on methadone or the specifics of her stated mental disability.

37. The records for Patient #1 indicate that a psychiatric consultation and a gastroenterology consultation were ordered but the records do not include these consultation reports.

38. The records for Patient #3 did not record the reason for her being on methadone. Her records contain references to multiple hospital visits, but only contain one admission report.

39. The records did not accurately reflect the reason Xanax was prescribed to Patient #2 or the reason for a later prescription of Ativan.

40. The records for Patient #2 show that X-rays were ordered, but no results appear in the records. Patient #2 was also ordered to see an orthopedic doctor but no consultation report was included with his records.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

41. At all times after the effective date of Respondent's probation, Condition 6 stated: "Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court-ordered criminal probation, payments, and other orders."

42. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, referenced above. The facts and circumstances regarding this violation are as follows:

A. The facts and circumstances alleged in paragraphs 9 through 14 and 20 through 23 are incorporated here as if fully set forth.

B. Respondent violated his probation order when, on and after April 16, 2014, the effective date of the probation order referenced in paragraph 3 above, he violated sections 2234 and 2266, as more fully set forth in the First and Second Causes for Discipline above.

C. Respondent further violated his probation order when, on August 7, 2018, he pled no contest to a violation of Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol with a blood alcohol level above a .08. The circumstances are as follows:

D. On March 5, 2018, Respondent was arrested for driving under the influence right after midnight. He was involved in a solo vehicle accident causing property damage to another car. He was traveling on the freeway and came close to hitting another car so he slammed on his brakes, his car started spinning and it collided with another car and the bridge rail.

E. When the police officer was speaking with Respondent, he could smell alcohol on his breath, noticed his eyes were watery and red, and he had slurred speech. Respondent said he drank two beers. When the officer demonstrated the field sobriety tests, Respondent could not perform them. Based on all of the above, Respondent was arrested for driving under the influence. Respondent's blood alcohol level was a .132 and .130, well above the

legal limit.

F. On August 7, 2018, when Respondent pled no contest, he was sentenced to 3-years summary probation, ordered to participate in a 3-month first offender alcohol and drug education program, ordered to pay the accident victim restitution, and attend AA meetings.

DISCIPLINARY CONSIDERATIONS

43. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 17, 2014, in a prior disciplinary action entitled *In the Matter of the Accusation Against Carlos Montenegro, M.D.* before the Medical Board of California, in Case Number 22-2010-205578, Respondent's certificate to practice medicine was revoked, the revocation was stayed and Respondent was placed on probation for four years effective April 16, 2014, with certain terms and conditions. That decision is now final and is 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 Medical Board of California issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 22-2010-205578 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 48811 issued to Carlos Humberto Montenegro, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate Number A 48811, issued to Carlos Humberto Montenegro, M.D.;

3. Revoking, suspending or denying approval of Carlos Humberto Montenegro, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Carlos Humberto Montenegro, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: October 31, 2018

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

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Exhibit B

Decision and Order in Case No. 22-2010-205578

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

In the Matter of the Accusation Against:	)	
CARLOS MONTENEGRO, M.D.	)	Case No. 22-2010-205578
Physician's and Surgeon's Certificate No. A-48811	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on April 16, 2014.

IT IS SO ORDERED: March 17, 2014.

MEDICAL BOARD OF CALIFORNIA

Dev Gnanadev MD

Dev Gnanadev, M.D., Chair
Panel B

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Attorneys for Complainant

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

In the Matter of the Accusation Against: CARLOS MONTENEGRO, M.D. PO BOX 94743 PASADENA, CA 91109 Physician's and Surgeon's Certificate No. A48811 Respondent.	Case No. 22-2010-205578 OAH No. 2013050209 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Interim Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Cindy M. Lopez, Deputy Attorney General.

2. Respondent Carlos Montenegro, M.D. ("Respondent") is represented in this proceeding by attorney Nicholas D. Jurkowitz, Esq., whose address is: 11835 West Olympic Boulevard, Suite 925, Los Angeles, CA 90064.

3. On or about October 22, 1990, the Medical Board of California issued Physician's and Surgeon's Certificate No. A48811 to Respondent. The Physician's and Surgeon's Certificate was

in full force and effect at all times relevant to the charges brought in Accusation No. 22-2010-205578 and will expire on August 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 22-2010-205578 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 11, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 22-2010-205578 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. 22-2010-205578. 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 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 22-2010-205578, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or 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.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A48811 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

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

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken 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 this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of

this Decision.

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

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

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

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

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

responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense throughout probation.

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

calendar days.

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

5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

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

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

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

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

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

Place of Practice

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

License Renewal

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

license.

Travel or Residence Outside California

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

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

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

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

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g.. restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

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

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

year.

ACCEPTANCE

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

DATED: 2/4/14

CARLOS MONTENEGRO, M.D.
Respondent

I have read and fully discussed with Respondent CARLOS MONTENEGRO, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2-4-14

Nicholas D. Jurkowitz, Esq.
Attorney for Respondent

ENDORSEMENT

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

Dated: 2.6.14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CINDY M. LOPEZ
Deputy Attorney General
Attorneys for Complainant

Exhibit A

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MARCH 11, 2013
BY: ANALYST

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

In the Matter of the Accusation Against: CARLOS MONTENEGRO, M.D. Post Office Box 94743 Pasadena, California 91109 Physician's and Surgeon's Certificate No. A48811 Respondent.	Case No. 22-2010-205578 **ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about October 22, 1990, the Board issued Physician's and Surgeon's Certificate number A48811 to Carlos Montenegro, M.D. (Respondent). On September 13, 2012, as a result of bail conditions imposed following Complainant's Penal Code section 23 motion, Respondent's license was restricted. Those restrictions are currently still in place. His license will expire on August 31, 2014, unless renewed.

JURISDICTION

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

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

5. 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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2052 of the Code states:

"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

"(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

"(c) The remedy provided in this section shall not preclude any other remedy provided by law."

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CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Medicine)

7. Respondent is subject to disciplinary action under section 2052 in that he aided and abetted an unlicensed person, Alberto Cota, in the practice of medicine. The circumstances are as follows:

A. On August 8, 2012, in proceedings entitled, *People of the State of California vs. Carlos Humberto Montenegro,* case number 2CA01183 in the Superior Court of Los Angeles County, Respondent was charged with 12 counts of aiding and abetting the unlicensed practice of medicine by Alberto Cota, a violation of Business and Professions Code section 2052, subdivision (b). He was alleged to have committed these crimes from August 2009 through March 2010. It was further alleged that Respondent committed eleven counts of altering medical records in violation of Penal Code section 471.5, from January 24, 2012 to May 9, 2012. This criminal case is still pending.

B. On March 18, 2010, the Board received a telephone complaint from a detective at the Los Angeles Police Department (LAPD) alleging that a person named Alberto Cota was representing himself as a doctor at the medical offices of Respondent. The complaint originated from a female patient, M.T.

C. On February 2, 2010, M.T. went to Respondent's clinic for complaints of back pain. She did not see Respondent; instead, she was treated by Cota. Alberto Cota had the patient stand in front of him, pull her pants below her hips and he grabbed her buttocks with his right hand and held her stomach with his left hand. Then he gave her an injection in her lower back.

D. After Cota grabbed M.T., he moved her underwear to one side and inserted his finger into her vagina, and said, "you're good." After the exam, Cota gave M.T. his phone number and said to call him. He hugged her and left the room.

E. M.T. reported this to the LAPD. On March 2, 2010, M.T. was asked by the police department to do a pretext call. While on the phone, Cota confirmed that when he touched her she was "wet" and he was excited by this. They also discussed arranging a date.

F. On March 16, 2010, Cota was arrested for a violation of PC 289(d), penetration with a foreign object.[1]

G. On April 9, 2010, an LAPD detective went to Respondent's clinic and saw Cota wearing a white lab coat that said "Dr. Cota" on it. There were no other doctors present.

H. Medical Board investigators interviewed several patients regarding their care and treatment at Respondent's clinic. Many of these patients were treated by Cota in or around 2009 through 2012. Patient N.U., a 17-year-old male, was treated by both Cota and Respondent. Cota treated him for mosquito bites and prescribed medications.

I. Patient J.P., a female, went to Respondent's clinic and was treated by Cota, who she referred to as "Dr. Cota." She indicated that Respondent only came to the clinic in the afternoon. Respondent told her if he was not available, she could see Cota. Cota prescribed medications to her. J.P. had a colonoscopy performed by Cota. Although she was treated by Cota, her insurance (Anthem) was billed as if she saw Respondent.

J. Patient J.M.B. and her children were treated by Cota. She was always referred to Cota and was not treated by Respondent. Cota prescribed antibiotics to her and her children. He performed pap smears on her. At some point J.M.B. was told by a pharmacist that Cota was not a doctor, so she called Respondent's office to confirm this. A woman named "Samantha" answered the phone and told her the only doctor who worked at the clinic was Respondent. Samantha told J.M.B. that if she was asked by authorities to tell them only Respondent treated her.

K. Patient A.B.C. treated at Respondent's clinic. Her children were treated by Cota. Cota performed a surgery on her son's toe, R.B.

L. Patient R.C.R. and her children were treated by Cota at Respondent's clinic. Cota treated her daughters G.M., L.M., and M.M. She referred to him as "Dr. Cota" and he never corrected her. They were treated by Cota from August 2009 through June 2010.

[1] In July 2012, Cota was convicted of sexual battery and practicing medicine without a license. He was placed on summary probation, ordered to serve time in county jail, and had to register as a sex offender.

M. On December 16, 2011, Respondent was interviewed by investigators with the Medical Board. He admitted that he never verified Cota's credentials when he hired him as a "medical assistant." Respondent claimed he is always at the clinic when Cota is there. He admitted that his staff called him "Dr. Cota". Respondent also admitted that he never told Cota not to call himself a doctor, nor did Respondent discourage his staff from referring to him as "Dr. Cota."

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A48811, issued to Carlos Montenegro, M.D.;

2. Revoking, suspending, or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering him to pay the costs of probation monitoring;

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

DATED: March 11, 2013

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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