

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

In the Matter of the Accusation Against

Jesus Herrera Lao, M.D.

Physician's and Surgeons
License No. A72729

Case No. 800-2017-036151

Respondent.

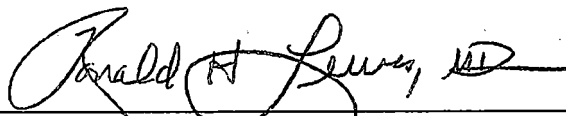
DECISION

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 July 16, 2020.

IT IS SO ORDERED: June 16, 2020.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 TESSA L. HEUNIS
Deputy Attorney General
4 State Bar No. 241559
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9403
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **JESUS HERRERA LAO, M.D.**
15 **25431 Rue de Fleur**
Escondido, CA 92026

16 **Physician's and Surgeon's Certificate**
17 **No. A 72729**

18 Respondent.

Case No. 800-2017-036151

OAH No. 2019080749

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

22 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
23 Board of California (Board). Former Executive Director Kimberly Kirchmeyer brought this
24 action solely in her official capacity as Executive Director of the Board.¹ Complainant is
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
26 Tessa L. Heunis, Deputy Attorney General.

27
28 ¹ Kimberly Kirchmeyer became Director of the California Department of Consumer
Affairs, effective October 28, 2019.

2. Respondent Jesus Herrera Lao, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: Doyle, Schafer, McMahon, 5440 Trabuco Road, Irvine, CA 92620.

3. On or about July 31, 2000, the Board issued Physician's and Surgeon's Certificate No. A 72729 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 800-2017-036151, and will expire on October 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-036151 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 June 20, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-036151 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-036151. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

////

////

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2017-036151.

9. Respondent agrees that his Physician's and Surgeon's Certificate No. A 72729 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any

////

1 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
2 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

3 **ADDITIONAL PROVISIONS**

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

7 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
8 be an integrated writing representing the complete, final and exclusive embodiment of the
9 agreements of the parties in the above-entitled matter.

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

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 72729 issued
15 to Respondent Jesus Herrera Lao, M.D. is revoked. However, the revocation is stayed and
16 Respondent is placed on probation for thirty-five months from the effective date of this Decision
17 on the following terms and conditions:

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

28 ////

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

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

15 Respondent shall submit a certification of successful completion to the Board or its
16 designee not later than 15 calendar days after successfully completing the course, or not later than
17 15 calendar days after the effective date of the Decision, whichever is later.

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

27 A medical record keeping course taken after the acts that gave rise to the charges in the
28 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

1 or its designee, be accepted towards the fulfillment of this condition if the course would have
2 been approved by the Board or its designee had the course been taken after the effective date of
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

27 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
28 date of this Decision, Respondent shall receive a notification from the Board or its designee to

1 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
2 shall cease the practice of medicine until a monitor is approved to provide monitoring
3 responsibility.

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

10 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
11 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
12 name and qualifications of a replacement monitor who will be assuming that responsibility within
13 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
14 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
15 notification from the Board or its designee to cease the practice of medicine within three (3)
16 calendar days after being so notified. Respondent shall cease the practice of medicine until a
17 replacement monitor is approved and assumes monitoring responsibility.

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

23 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
24 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
25 Chief Executive Officer at every hospital where privileges or membership are extended to
26 Respondent, at any other facility where Respondent engages in the practice of medicine,
27 including all physician and locum tenens registries or other similar agencies, and to the Chief
28 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

1 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
2 calendar days.

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

4 6. NURSES. During probation, Respondent is prohibited from supervising physician
5 assistants and advanced practice nurses.

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

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

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

14 9. GENERAL PROBATION REQUIREMENTS.

15 Compliance with Probation Unit

16 Respondent shall comply with the Board's probation unit.

17 Address Changes

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

23 Place of Practice

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

27 ////

28 ////

1 License Renewal

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

4 Travel or Residence Outside California

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

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

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

14 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
15 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
16 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
17 defined as any period of time Respondent is not practicing medicine as defined in Business and
18 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
19 patient care, clinical activity or teaching, or other activity as approved by the Board. If
20 Respondent resides in California and is considered to be in non-practice, Respondent shall
21 comply with all terms and conditions of probation. All time spent in an intensive training
22 program which has been approved by the Board or its designee shall not be considered non-
23 practice and does not relieve Respondent from complying with all the terms and conditions of
24 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
25 on probation with the medical licensing authority of that state or jurisdiction shall not be
26 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
27 period of non-practice.

28 ////

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

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

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

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

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

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

24 14. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
3 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
4 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
5 application shall be treated as a petition for reinstatement of a revoked certificate.

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

11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Raymond J. McMahon. I fully understand the stipulation and the
14 effect it will have on my Physician's and Surgeon's Certificate No. A 72729. I enter into this
15 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
16 to be bound by the Decision and Order of the Medical Board of California.

17 DATED: 02/18/2020 Jesus Herrera Lao, M.D.
18 JESUS HERRERA LAO, M.D.
Respondent

19 I have read and fully discussed with Respondent Jesus Herrera Lao, M.D., the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22 DATED: February 19, 2020 Raymond J. McMahon, Esq.
23 RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

24 ////

25 ////

26 ////

27 ////

28 ////

ENDORSEMENT

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

DATED: 3.9.20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

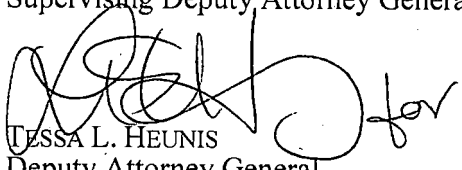

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-036151

1 XAVIER BECERRA
2 Attorney General of California
3 MATTHEW M. DAVIS
4 Supervising Deputy Attorney General
5 TESSA L. HEUNIS
6 Deputy Attorney General
7 State Bar No. 241559
8 600 West Broadway, Suite 1800
9 San Diego, CA 92101
10 P.O. Box 85266
11 San Diego, CA 92186-5266
12 Telephone: (619) 738-9403
13 Facsimile: (619) 645-2061

14 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JUNE 20, 2019
BY 2. P. W. J. S. ANALYST

15
16
17
18
19
20
21
22
23
24
25
26
27
28
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

29 In the Matter of the Accusation Against:

Case No. 800-2017-036151

30 Jesus Herrera Lao, M.D.
31 25431 Rue de Fleur
32 Escondido, CA 92026

ACCUSATION

33 Physician's and Surgeon's Certificate
34 No. A 72729,

Respondent.

35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 31, 2000, the Medical Board issued Physician's and Surgeon's Certificate No. A 72729 to Jesus Herrera Lao, 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 October 31, 2021, 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 (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

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

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

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

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

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

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

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.

“...

////

////

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

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

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

11 “...”

12 6. Section 2266 of the Code states:

13 “The failure of a physician and surgeon to maintain adequate and accurate records
14 relating to the provision of services to their patients constitutes unprofessional conduct.”

15 7. Section 4021 of the Code states:

16 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with
17 Section 11053) of Division 10 of the Health and Safety Code.”

18 8. Section 4022 of the Code states:

19 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-
20 use in humans or animals, and includes the following:

21 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
22 without prescription,’ ‘Rx only,’ or words of similar import.

23 “...”

24 “(c) Any other drug or device that by federal or state law can be lawfully dispensed
25 only on prescription or furnished pursuant to Section 4006.”

26 9. Unprofessional conduct under Business and Professions Code section 2234 is conduct
27 which breaches the rules or ethical code of the medical profession, or conduct which is

28 ////

1 unbecoming to a member in good standing of the medical profession, and which demonstrates an
2 unfitness to practice medicine.¹

3 DEFINITIONS

4 10. Morphine Milligram Equivalent (MME) or Morphine Equivalent Dosage (MED), as
5 it was previously known, is a value assigned to opioids to represent their relative potencies.
6 MME is determined by using an equivalency factor to calculate a dose of morphine that is
7 equivalent to the ordered opioid. Daily MME (or MED) is the sum of the MME of all drugs in
8 the opioid class a patient is likely to take over 24 hours, and that total is used to determine if the
9 patient is nearing a potentially dangerous threshold. The primary side effect of opioid overdose is
10 respiratory depression, which frequently leads to serious complications or death.

11 11. As an example of the use of daily MME/MED, the Centers for Medicare & Medicaid
12 Services (CMS) publishes morphine equivalent tables. In its 2017 Call Letter draft, CMS
13 recommends a point-of-sale (POS) "soft edit threshold" of 90-120 mg daily cumulative MME,
14 which can be overridden by a pharmacist, and a "hard edit threshold" of 200 mg daily cumulative
15 MME. A claim is rejected at the POS if the beneficiary's active or overlapping opioid
16 prescriptions reach or exceed a certain daily cumulative MED threshold.

17 12. Methadone is a synthetic opioid prescribed for moderate to severe pain. It is a
18 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
19 (b), and a dangerous drug pursuant to Code section 4022. It is used to treat pain and opiate
20 addiction.

21 13. Oxycodone, also known as OxyContin or Roxicodone, is a Schedule II controlled
22 substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous
23 drug pursuant to Code section 4022. It is used to treat pain.

24 14. Morphine is a Schedule II controlled substance pursuant to Health and Safety Code
25 section 11055, subdivision (b), and a dangerous drug pursuant to Code section 4022. It is used to
26 treat pain.

27 ////

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

15. Hydromorphone, also known as Dilaudid, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Code section 4022. It is used to treat pain.

16. Tapentadol, also known as Nucynta, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Code section 4022. It is used to treat pain.

17. Percocet and Roxicodone are brand names for oxycodone and acetaminophen, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Code section 4022. It is used to treat pain.

18. Hydrocodone/acetaminophen (apap), also known as Norco, Vicodin and Lortab, is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e), and is a dangerous drug as designated by Code section 4022. It is used to treat pain.

19. Temazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Code section 4022. It is used to treat insomnia and anxiety.

20. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Code section 4022. It is an anticonvulsant or antiepileptic drug, and also used to treat panic attacks.

21. Diazepam, also known as Valium, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is used to treat anxiety disorders, alcohol withdrawal symptoms, or muscle spasms.

22. Carisoprodol, also known as Soma, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Code section 4022. It is used to treat muscle spasms.

23. Seroquel, a brand name for quetiapine, is a psychotropic medication used to treat schizophrenia. It is also used in the treatment of major depression and bipolar disorder, and is a dangerous drug pursuant to Code section 4022.

- 1 24. Buspar is a dangerous drug pursuant to Code section 4022. It is used to treat anxiety.
- 2 25. Amitriptyline hydrochloride, also known as Elavil, is a tricyclic antidepressant with
- 3 analgesic properties, widely used to treat depression and neuropathic pain. It is a dangerous drug
- 4 pursuant to section 4022.
- 5 26. Tizanidine, also known as Zanaflex, is a short-acting muscle relaxer. It is a
- 6 dangerous drug pursuant to Code section 4022.
- 7 27. Baclofen is a muscle relaxer and an antispasmodic agent. It is a dangerous drug
- 8 pursuant to Business and Professions Code section 4022.
- 9 28. Venlafaxine is a dangerous drug pursuant to Business and Professions Code section
- 10 4022. It is used to treat major depressive disorder, anxiety, and panic disorder.
- 11 29. Lasix is a dangerous drug pursuant to Code section 4022. It is used to treat fluid
- 12 retention in people with congestive heart failure, and other health conditions.
- 13 30. Atorvastatin, also known as Lipitor, is a statin medication used to prevent
- 14 cardiovascular disease in those at high risk and treat abnormal lipid levels. It is a dangerous drug
- 15 pursuant to Business and Professions Code section 4022.
- 16 31. Gabapentin is a nerve pain medication and anticonvulsant. It acts as a sedative, and is
- 17 a dangerous drug pursuant to Business and Professions Code section 4022.
- 18 32. A Lidoderm patch contains 5% lidocaine and is a local anesthetic. This strength is
- 19 available by prescription only, although a 3.6% version is available over-the-counter.
- 20 33. Ibuprofen is a medication in the nonsteroidal anti-inflammatory drug (NSAID) class
- 21 that is used for treating pain, fever, and inflammation. It can be purchased over-the-counter in
- 22 200 milligram (mg) tablets, while higher doses require a prescription.
- 23 34. CURES is a prescription drug monitoring program that includes information
- 24 regarding prescriptions for certain controlled substances. (Health & Saf. Code, § 11165, subds.
- 25 (a) & (d); *Lewis v. Superior Court* (2017) 3 Cal.5th 561, 565.)

26 /-/-

27 /-/-

28 /-/-

FACTUAL ALLEGATIONS

35. At all times mentioned herein, Respondent was a board-certified specialist in physical medicine and rehabilitation.

36. The standard of care requires that a physician who is prescribing controlled substances to treat a patient with pain see the patient periodically in order to monitor the therapy. This allows the physician to assess the patient's progress toward treatment objectives, to assess the patient's adherence to treatment with controlled substances, and to assess whether the patient is having any adverse effects from the controlled substances. This periodic review enables the physician to determine whether treatment of the patient's pain with controlled substances should be continued or modified.

37. The standard of care also requires that a patient's vital signs be checked, especially at the initial visit.

38. When prescribing opioids to a patient with asthma, the standard of care requires that the physician listen to the patient's lungs.

39. The standard of care requires that a physician keep adequate and accurate records of his treatment of a patient, including documentation of history and examination, diagnostic testing (if available), diagnoses or impressions, and a treatment plan. When treating pain, the physician should describe the pain in regard to its location, intensity, and impact upon functioning. There should also be a focused physical examination pertaining to the specific pain complaint.

Patient 1:

40. Patient 1, a male patient born in June 1962, was referred to Respondent's pain medicine practice for evaluation and treatment of lumbar stenosis and chronic pain syndrome. At the time of his referral, he was already taking high dose opioid analgesic medication. Respondent treated Patient 1² from on or about December 4, 2012, through August 2013.

41. At his first visit, on or about December 4, 2012, Respondent examined the patient and completed an eight-page template consultative report with handwritten entries in which he

² All patients mentioned herein are referred to by number, rather than by name or initials, to protect their privacy. The true identity of each of the patients is known to all the parties.

1 described the nature and extent of Patient 1's pain and made reference to prior treatments,
2 including a laminectomy in 2010. Respondent listed the pain medicines which Patient 1 was then
3 taking, including methadone 10 mg, gabapentin 600 mg and oxycodone 15 mg, but the frequency
4 of the dosage is not clear from the notes. Respondent also listed Lasix and Lipitor as then current
5 medications, without indicating either dose or frequency. His treatment plan is not stated in this
6 office note, with no reference to medications he prescribed at this visit.

7 42. Patient 1 completed a Comprehensive Pain Management Questionnaire around the
8 time of his first visit. In response to a question on the questionnaire, Patient 1 disclosed that he
9 had been treated by a psychiatrist or had been in psychotherapy in 2011, and reported feeling sad
10 or depressed, sleeping only one to three hours per night. Patient 1 omitted the question
11 concerning whether he had thoughts of suicide. There is no indication in the record that
12 Respondent explored these symptoms with Patient 1.

13 43. Patient 1's past medical history included coronary artery disease, morbid obesity,
14 hypertension, hyperlipidemia, low back surgery, gastric bypass procedure, coronary artery bypass
15 grafting, and placement of a pacemaker defibrillator. Respondent diagnosed Patient 1 with
16 lumbago and prescribed methadone 20 mg three times a day, and 30 mg oxycodone four times per
17 day.

18 44. Respondent's treatment goals or objectives for Patient 1 is unclear from his records
19 dated on or about this visit, mentioning only that he was increasing the patient's previous 15 mg
20 oxycodone to 30 mg "for better pain control."

21 45. Patient 1 suffered from high blood pressure, heart disease, and morbid obesity.
22 Respondent did not check his vital signs at any time during his treatment of Patient 1.

23 46. After the initial visit, Respondent saw Patient 1 for a further seven (7) visits.
24 Respondent's notes for these visits consist of two-page template reports upon which he made
25 handwritten entries. The office note for each of these visits indicate the patient had "fair pain
26 control" without further explanation. The physical exam for every note states "L3, L5 tender to
27 palpation" (in abbreviated form). Respondent's notes for May, June, and August 2013, have an
28 additional line, "morbidly obese."

1 47. Respondent's treatment goals for Patient 1, relative to the prescribed medications, are
2 unclear, and Respondent's notes do not indicate whether his treatment goals, if any, were being
3 met. The dosages of the medicines are not clearly specified, and when there are changes in the
4 medications, the rationale for the changes is not documented.

5 48. One example of Respondent's unclear prescribing practices is that, on or about
6 April 24, 2013, Respondent changed Patient 1's prescription for oxycodone to morphine. No
7 explanation for the change can be found in Respondent's notes for this visit.

8 49. Another example is Respondent's prescribing of amitriptyline (Elavil). Adverse
9 effects of amitriptyline include lightheadedness and cardiac conduction problems, among others.
10 Patient 1, at the age of 50 with a known history of heart disease, was at increased risk for adverse
11 cardiac effects from amitriptyline. In addition, Patient 1's morbid obesity, in combination with
12 his use of the sedative drug amitriptyline, placed him at significant risk for sleep apnea with its
13 increased risk for cardiovascular morbidity and mortality.

14 50. Respondent first prescribed amitriptyline at a dose of 25 mg at bedtime, later
15 increased to 75 mg at bedtime and, finally, on or about August 13, 2013, increased to 150 mg at
16 bedtime. It is unclear from Respondent's notes both why he prescribed Patient 1 amitriptyline,
17 and why he increased the dose. The medical record also does not show that Respondent talked
18 with Patient 1 about potential adverse effects. Similarly, the medical record gives no indication
19 that Respondent checked an electrocardiogram for Patient 1. At an interview conducted during
20 the investigation of this case ("a subject interview"³), Respondent admitted that he did not discuss
21 his prescribing of 150 mg of amitriptyline per day (in conjunction with 60 mg methadone per
22 day) with Patient 1's cardiologist at the time of prescribing it.

23 51. Almost throughout the period of his treatment of Patient 1, including at the time of his
24 last visit with Respondent on or about August 13, 2013, Respondent prescribed medication that
25 equates to a MME of 780 mg daily.

26 ³ During the course of the investigation of this matter, Respondent attended three subject
27 interviews to discuss his care and treatment of the seven patients mentioned in this Accusation.
28 For convenience, these interviews are not identified by individual date, but generically referred to
as "a subject interview."

52. Throughout his period of treatment of Patient 1, Respondent did not order any laboratory testing or urine drug screens of the patient.

53. There is no documentation concerning whether Patient 1 was taking his medications as directed or having problems controlling his use of the drugs.

54. Patient 1 passed away on August 24, 2013. The coroner's report attributed his death to heroin,⁴ methadone and oxycodone effect with other significant conditions contributing to death, including morbid obesity, atherosclerotic heart disease, hypertensive heart disease, and pulmonary thromboembolism from deep venous thrombosis.

55. After Patient 1's passing, information came to light which suggests that Patient 1 may have suffered from sleep apnea and symptoms of depression, and consumed a high level of alcohol on a daily basis. It appears from Patient 1's medical record that Respondent was not aware of these potential risk factors.

Patient 2:

56. Patient 2, a female patient born in March 1958, was referred to Respondent's pain medicine practice in or around 2013 for evaluation and treatment of chronic low back and right leg pain dating back to 1999. At the time of her referral, she was already taking high dose opioid analgesic medication. Respondent treated Patient 2 from on or about October 22, 2013, through on or about January 14, 2015.

57. Respondent's initial note, for Patient 2's first visit with Respondent, on or about October 22, 2013, is a handwritten, template, eight-page report entitled History and Physical Pain Management. In it, he documented the history, physical examination, assessment, and plan. The note documents the dosage and frequency of medications Patient 2 was then taking, without specifying dosage and frequency.

58. At Patient 2's first visit, Respondent diagnosed her with failed back syndrome, and prescribed OxyContin 80 mg x 3 tablets per day, oxycodone 15 mg x 4 mg per day, and tizanidine

////

⁴Patient 1's wife disputes any suggestion that Patient 1 used heroin, and there is no known evidence to the contrary.

1 6 mg x 4 tablets per day. Respondent's treatment plan for Patient 2 is unclear from his notes, as
2 he did not explicate treatment objectives.

3 59. After the initial visit, Respondent saw Patient 2 for sixteen (16) follow-up visits
4 between on or about November 19, 2013, and January 14, 2015. His office notes for these visits
5 consist of two-page preprinted templates with handwritten entries, which are almost identical
6 from visit to visit, with little or no variation, and do not assist in determining treatment goals.

7 60. Respondent's notes for Patient 2 provide no indication that he was monitoring the
8 nature and intensity of Patient 2's pain, her response to treatment with the pain medicines, or her
9 activity tolerance in relation to the medications.

10 61. There is no indication in Respondent's notes for Patient 2 that he was monitoring her
11 for adverse effects from the drugs she was prescribed.

12 62. Respondent's notes make no mention of whether Patient 2 was taking her medications
13 as directed or having problems controlling her use of the drugs.⁵

14 63. Respondent never checked the blood pressure and pulse of Patient 2, who had
15 hypertension and was taking Diovan, an antihypertensive. Respondent's notes for Patient 2
16 contain scant documentation of his physical examination findings.

17 64. The dosages of the pain medicines prescribed by Respondent to Patient 2 are not
18 clearly specified in his notes, and when there are changes in the medications, the rationale for the
19 changes is not documented. For instance, at Patient 2's initial visit, Respondent reduced her then
20 oxycodone dose by 15 mg daily, to 4 x 15 mg tablets per day. Two visits later, on or about
21 December 17, 2013, he doubled it to 4 x 30 mg tablets per day, with no rationale provided for the
22 increase. Respondent made no further changes to the dosages of Patient 2's opioid analgesics
23 during the course of his treatment of her.

24 65. On or about January 14, 2015, at Patient 2's final visit with Respondent, he increased
25 her tizanidine dose from 4 x 6mg tablets, to 6 x 6 mg tablets, but it is unclear from the records
26 why he did so.

27 ⁵ The record contains one urine drug screen and two CURES reports that Respondent
28 accessed during the time he treated Patient 2.

1 66. At the same time that Respondent was prescribing high dose opioid analgesic therapy
2 plus tizanidine to Patient 2, he was aware that she was also being prescribed two benzodiazepines
3 (temazepam and clonazepam) by her psychiatrist. There is no indication in the record that he
4 collaborated his care of Patient 2 with the psychiatrist.

5 Patient 3:

6 67. Respondent treated Patient 3, a female born in November 1964, for a three-year
7 period from on or about February 1, 2012⁶ through on or about March 25, 2015, for chronic neck,
8 low back, and knee pain. She had comorbid conditions including morbid obesity, osteoarthritis,
9 hypertension, and major depression. Besides the aforementioned conditions, Respondent's notes
10 for Patient 3 also reference her peptic ulcer disease.

11 68. Respondent's office visit notes consist of two-page preprinted templates upon which
12 Respondent made handwritten entries. His treatment objectives are unclear from the medical
13 record.

14 69. Respondent's initial diagnoses for Patient 3 at her first visit, on or about February 1,
15 2012, were lumbago, lumbar spondylosis, and morbid obesity. His notes on his physical
16 examination of Patient 3 state, "morbidly obese; decreased lumbar sacral range of motions; L3 to
17 L5, tender to palpation" (in abbreviated form). These physical examination notes of Patient 3
18 remain unchanged for the following four (4) visits.

19 70. At Patient 3's first visit, Respondent prescribed her Valium, morphine sulphate 60 mg
20 (2 tablets, 3 x per day) and morphine sulphate 30 mg (1 tablet, 3 x per day) (an approximate total
21 of 450 mg morphine sulfate per day), and hydromorphone 4 mg x 300 (roughly 40 mg per day).

22 71. On or about August 31, 2012, Respondent added cervicalgia and bilateral "knee DD"⁷
23 to his assessment and plan, and added "decreased bilateral knee range of motion" and "C3, C6
24 tender to touch" to the physical examination note. This physical examination note remained
25 unchanged at all Patient 3's future visits until on or about June 27, 2014.

26 _____
27 ⁶ Conduct occurring more than seven (7) years from the filing date of this Accusation is
28 for informational purposes only and is not alleged as a basis for disciplinary action.

⁷ Possibly degenerative disease.

1 72. From on or about June 27, 2014, until September 26, 2014, Respondent's physical
2 examination note for Patient 3 states only "morbidly obese."

3 73. Patient 3's pain was given a numerical rating in Respondent's treatment notes for
4 February 1, 2012, February 29, 2012, March 28, 2012, April 11, 2012, and June 20, 2012. There
5 is not another reference to pain intensity until April 26, 2013, when Respondent noted "poor pain
6 control" in his notes for that visit. In the notes that follow, Respondent uses the terms "fair,"
7 "fair-poor," or "poor" pain control, without further elaboration.

8 74. In his note for Patient 3's visit on or about December 5, 2014, Respondent states the
9 chief complaint is "severe knee pain and back pain and neck pain." This note also states that
10 Patient 3 had "difficulty of walking and function," which is the only reference to Patient 3's
11 activity tolerance, or the impact of the pain on her functioning, in his notes covering the
12 approximately twenty-six (26) visits over the roughly three year period of his treatment of
13 Patient 3.

14 75. Respondent maintained Patient 3 on his initial prescriptions of 40 mg of
15 hydromorphone per day, and 450 mg of morphine sulfate per day throughout 2012, 2013, and
16 2014 through October 2014 (covering a total of thirty-one (31) visits).

17 76. On or about October 24, 2014, Respondent discontinued all the morphine and the
18 Dilaudid. In their place, he prescribed 40 mg methadone per day and Nucynta IR 100 mg
19 respectively. No explanation for the change in medications is provided in Respondent's note for
20 this visit. Respondent made the change without doing any type of morphine equivalent dosing to
21 determine how much Nucynta was necessary to substitute for the Dilaudid.

22 77. Approximately four (4) days later, on or about October 28, 2014, Patient 3 contacted
23 Respondent's office, complaining of withdrawal symptoms including diarrhea, sweats, chills,
24 cramping, and nausea. On that date, Respondent prescribed two (2) clonidine 0.3 mg transdermal
25 patches (one (1) patch per seven days) for Patient 3, as well as Phenergan 25 mg, four (4) x per
26 day. On or about November 3, 2014, Patient 3 again called in with complaints that the
27 medications were not working for her. She was advised to return to the clinic for medication
28 adjustment.

1 78. On or about November 7, 2014, Patient 3 returned to the clinic. No mention is made
2 of her withdrawal symptoms. At this visit, Respondent discontinued the methadone 40 mg per
3 day, changed the Nucynta IR 100 mg to Nucynta ER 250 mg (two (2) tablets a day), and added
4 oxycodone 15 mg four (4) times per day. On or about November 26, 2014, Respondent
5 discontinued the oxycodone and started morphine IR. On or about December 5, 2014, the
6 Nucynta ER was increased to three (3) tablets per day, the morphine IR was discontinued, and
7 Patient 3 was prescribed Dilaudid once more (24 mg per day). Respondent's notes provide no
8 explanation for or rationale behind the changes.

9 79. It is generally unclear from his notes what Respondent was prescribing Patient 3, or
10 why. In addition to prescribing her high dose opioid analgesic medicine, at other times he
11 appears to have also prescribed her diazepam, baclofen, and venlafaxine.

12 80. Respondent's notes for his treatment of Patient 3 do not reflect that he was
13 monitoring her for adverse effects from the medications she was taking. For instance, there is no
14 indication that any laboratory tests were ever performed to check Patient 3's renal or liver
15 functions. Respondent also never took Patient 3's vital signs, despite her suffering from
16 hypertension and being morbidly obese (with a reported weight of 350 pounds). After Patient 3's
17 first three (3) office visits, her actual weight is never again mentioned in Respondent's notes.

18 81. Respondent's notes of his musculoskeletal and neurological examinations of Patient 3
19 contain scant documentation of his examination findings. In his note dated October 24, 2014, he
20 noted that Patient 3 had recently fallen; however, no further details are provided either in terms of
21 history or his physical examination of Patient 3.

22 Patient 4:

23 82. Respondent treated Patient 4, a female born in November 1962, from on or about
24 February 8, 2012 through on or about July 24, 2013.

25 83. Patient 4 complained of low back pain that had begun after an accident in July 1992.
26 She reported taking oxycodone and gabapentin since 2004, and ibuprofen and carisoprodol since
27 2005. She further reported having had three surgeries and indicated a history of high blood
28 pressure.

1 84. Respondent first saw Patient 4 on or about February 8, 2012. His note for this visit is
2 an eight-page, handwritten, template consultative report, in which he described the nature and
3 extent of Patient 4's pain and made brief reference to prior treatments, including three lumbar
4 surgeries, the nature and extent of which are unclear. Respondent listed Patient 4's pain
5 medicines as OxyContin, oxycodone, Soma, Motrin, and gabapentin. Patient 4's past medical
6 history was notable for a right kidney stone.

7 85. Respondent diagnosed Patient 4 with failed back syndrome, and his treatment plan
8 was pharmacotherapy. He refilled her medications including OxyContin 480 mg daily, Percocet
9 10/325mg x 4 tablets daily, gabapentin 1200 mg daily, amitriptyline 50 mg daily, Soma four
10 tablets daily, and ibuprofen 800 mg four tablets daily.

11 86. After the initial visit, Respondent's office notes for Patient 4 are two-page, template
12 reports upon which he made handwritten entries.

13 87. Respondent's treatment objectives are unclear from his chart on Patient 4.⁸

14 88. Over the course of sixteen (16) office visits, Respondent noted a numerical pain
15 intensity rating for Patient 4's pain on the first three visits only. A further five (5) visits, starting
16 in July 2012, state "fair pain control" without elaboration, and the remaining visits are silent on
17 Patient 4's pain intensity. There is no mention in Respondent's notes of Patient 4's activity
18 tolerance, or the impact of her pain on her functioning. The chart contains no mention of whether
19 Patient 4 was suffering from any adverse effects of the medications she was taking.

20 89. It is not apparent from Respondent's chart that he was making periodic review of
21 Patient 4's progress, and adjusting the dosages of her pain medicines accordingly. Respondent
22 maintained Patient 4 on the same dosage of OxyContin and oxycodone throughout 2012. On or
23 about May 29, 2013, he indicated in his notes for that visit that Patient 4 would henceforth be on a
24 reduced dose of four (4) OxyContin tablets per day, down from six (6) tablets per day. In reality,

25
26 ⁸ One exception to this is an undated, one-page pre-printed questionnaire required by the
27 Inland Empire Health plan (IEHP), in which the Respondent answered questions, briefly
28 indicating Patient 4's then pain rating, the pain scale goal, whether she was experiencing any side
effects from her current pain reliever(s), and whether Patient 4 was exhibiting any aberrant drug-
related behavior. When asked for his treatment plan, Respondent checked the box marked
"continue present regimen," and added "[patient] stable on meds."

1 Respondent continued prescribing six (6) tablets per day. At a subject interview, Respondent
2 stated that Patient 4 refused to reduce her dosage, and so the office note was only to reflect that he
3 wanted her to go down to four (4) per day.

4 90. Respondent's chart for Patient 4 contains no reference to laboratory testing of her
5 renal or liver functions. He also never checked Patient 4's blood pressure or pulse, despite her
6 history of hypertension. Respondent's notes of his musculoskeletal and neurological
7 examinations of Patient 4 contain the same cursory exam notes at every visit. No urine drug
8 screen was performed until Patient 4's final visit on or about July 24, 2013, when the patient was
9 discharged due to obtaining medications from other physicians.

10 Patient 5:

11 91. Respondent treated Patient 5, a male born in June 1976, for several years, including
12 the period reviewed here, namely, from on or about January 19, 2011, through December 5, 2014.
13 Respondent diagnosed Patient 5 with chronic low back and leg pain, and his notes also reflect the
14 comorbid conditions of anxiety and migraine.

15 92. On or about January 19, 2011, Respondent saw Patient 5 and continued his
16 prescriptions for morphine 100 mg ER (600 mg per day), and Roxicodone 45 mg per day. On or
17 about June 7, 2011, Respondent doubled the Roxicodone prescription to 90 mg per day and, on or
18 about January 3, 2012, increased the Roxicodone prescription to 120 mg per day. The increased
19 dosage is not mentioned in Respondent's note for January 3, 2012, and no rationale or
20 explanation is provided for either of the increased dosages.

21 93. After the initial visit, Respondent's office notes for Patient 4 are two-page, template
22 reports upon which he made handwritten entries.

23 94. Respondent saw Patient 5 again, on or about November 30, 2012, and continued the
24 prescription for 600 mg of morphine sulfate per day, while increasing the Roxicodone to 150 mg
25 per day. No explanation for the increase can be found in his notes for this visit.

26 95. Respondent saw Patient 5 at twelve (12) visits during 2013, and ten (10) visits during
27 2014. During this period, he maintained the patient on 600 mg extended release morphine and

28 ////

1 150 mg Roxicodone per day. These medications, combined, add up to a morphine equivalent
2 dosage of 825 mg daily.

3 96. Respondent's treatment objectives are unclear from the medical record. From
4 November 2012 through February 2013, Respondent makes no attempt to describe Patient 5's
5 pain. From March 2013 through August 2014, Respondent notes either "good" or "fair" pain
6 control, without further elaboration. Between August 2014 and December 2014, there is again no
7 description of the nature and extent of Patient 5's pain. Neither Patient 5's activity tolerance nor
8 the impact of his pain on his functioning are addressed anywhere in Respondent's records.

9 97. It is unclear from the record whether Respondent was monitoring Patient 5 for
10 adverse effects from the drugs he was prescribing him. Respondent never took Patient 5's vital
11 signs, and his musculoskeletal and neurological examinations throughout the period under review
12 contain nothing more than a cryptic, virtually identical, repeated reference to tenderness in the
13 L3-L5 region. It is not stated whether this tenderness is bilateral, or more on one side than the
14 other.

15 98. There are no imaging studies in Patient 5's file, and no results of any laboratory
16 testing of Patient 5's renal or liver functions.

17 99. The medical record contains no comment on Patient 5's migraine, or how that may or
18 may not have been impacted by his taking high-dose opioid analgesics.

19 100. Patient 5 was receiving concurrent prescriptions for clonazepam 2 mg daily, during
20 2013, written by another provider, possibly Patient 5's psychiatrist. Respondent never asked
21 Patient 5 if he was consulting a mental health care provider and never conferred with any
22 psychiatrist in order to collaborate in terms of Patient 5's treatment.

23 Patient 6:

24 101. Patient 6, a male born in November 1974, was a patient of Respondent's for several
25 years including the period reviewed here, namely, from on or about August 5, 2011, through on
26 or about May 22, 2014. Respondent treated Patient 6 for chronic low back and ankle pain, and
27 his record for Patient 6 indicates the patient had undergone surgery for left ankle fracture at some
28 point prior to August 5, 2011. The chart does not provide the date of the surgery.

1 102. Respondent's office notes for Patient 6 consist of two-page preprinted templates upon
2 which Respondent made succinct handwritten entries. The records offer sparse information about
3 Patient 6's pain complaints, response to treatment, Respondent's examination findings and
4 treatment goals.

5 103. On or about August 5, 2011, Respondent saw Patient 6 and completed an office note
6 for the visit. Under the typed heading, "Physical Exam," Respondent wrote (in abbreviated form)
7 "bilateral ankle tenderness" and "L3, L5 tender to palpations."

8 104. At the visit on or about August 5, 2011, Respondent issued two prescriptions for
9 OxyContin 80 mg (240 mg – 480 mg daily), one for 180 tablets to be mailed, and another for 18
10 tablets to be filled at a local pharmacy.

11 105. Respondent saw Patient 6 monthly from August 2011 through April 2012. In his
12 notes for each of these visits, his physical exam findings were described almost identically as on
13 August 5, 2011. They repeat Patient 6's tenderness of his ankle and in the lower lumbar
14 paraspinal regions, without mention of whether bilateral or otherwise, and without range of
15 motion measures. There is no neurological examination of the lower limbs. Throughout this
16 period, Patient 6 was maintained on the same OxyContin dose of up to 480 mg per day, and, on
17 each occasion, two OxyContin 80 mg prescriptions were issued, 180 to be mailed, and 18 to be
18 filled locally.

19 106. On or about July 17, 2012, Respondent's notes on his physical exam of Patient 6 state
20 only "L3, L5 tender to palpation." No mention is made of the nature or extent of Patient 6's pain
21 (other than "LBP" under the heading "Interval Note"). The OxyContin prescriptions were again
22 reissued.

23 107. Respondent's notes for Patient 6's office visits for twelve (12) of the first thirteen
24 (13) visits in the period under review, indicate that the patient had either "fair" or "good" pain
25 control, without elaboration. There is no mention anywhere in Respondent's notes for Patient 6
26 (for the entire period under review) of his activity tolerance or the impact of the pain on his
27 functioning.

28 ////

1 108. Respondent's notes for Patient 6's office visits on or about December 31, 2013,
2 January 28, 2014, February 25, 2014, and March 27, 2014, respectively, provide no information
3 regarding any physical examination of Patient 6. The notes, likewise, are silent on the pain
4 reported by Patient 6 (other than "LBP" under the heading "Interval Note"). At each of these
5 visits, Respondent issued a prescription for OxyContin 80 mg, six (6) daily.

6 109. On or about April 8, 2013, a urine drug screen was performed on Patient 6, which
7 showed a positive result for morphine, which Respondent was not prescribing to him. A positive
8 test for morphine could result from taking morphine, codeine, or heroin. Respondent did not
9 address this positive result for morphine with Patient 6 at any stage.

10 110. Patient 6's medical chart includes a note dated July 11, 2013, when the pharmacy
11 called to say that, with all the extra prescriptions Patient 6 had been receiving, he should be
12 approximately one and a half months ahead with his pills.

13 111. On or about July 31, 2013, Respondent again saw Patient 6. His physical exam is
14 noted, again, as "positive L3, L5 tender to palpation." No mention is made of the July 11, 2013,
15 call from the pharmacy, but, at this visit, Respondent issued only one OxyContin 80 mg
16 prescription, for 180 tablets (six (6) daily).

17 112. No vital signs are recorded in any of Respondent's notes of Patient 6's visits.

18 113. The medical record for Patient 6 does not contain any outside medical reports or
19 imaging studies.

20 114. Respondent's treatment objectives are unclear from the medical record. He
21 prescribed 480 mg of OxyContin daily throughout his treatment of Patient 6 without making any
22 effort to wean the patient's opioid, at least until June 2014.

23 115. In June 2014, due to insurance difficulties, Respondent attempted to substitute the
24 480 mg of OxyContin with 260 mg of morphine daily; however, the patient refused, and the
25 change was not made. The proposed change would have resulted in a decrease from a MED of
26 720 mg daily, to 260 mg daily. This would likely have precipitated opioid withdrawal symptoms
27 in Patient 6.

28 ////

1 116. Respondent prescribed OxyContin 80 mg as "one to two" tablets to be taken, three
2 times a day. This effectively gave Patient 6 the latitude of varying his dosage by as much as 50%
3 from day-to-day, and could led to significant fluctuations in the dose from day-to-day and
4 precipitate symptoms of withdrawal or overmedication.

5 117. Respondent's chart for Patient 6 contains no discussion of possible side effects of the
6 OxyContin, nor any indication that Respondent was monitoring the patient for any side effects,
7 including constipation.

8 118. There are no laboratory results for renal or liver function tests in Patient 6's chart.

9 Patient 7:

10 119. Patient 7, a female born in September 1959, was a patient of Respondent from on or
11 about June 14, 2013, through on or about December 27, 2013.

12 120. At Patient 7's initial visit on or about June 14, 2013, she completed a health history
13 questionnaire, in which she identified herself as having chronic pain, multiple sclerosis and
14 asthma. She reported previously experiencing asthma attacks and palpitations, and listed the
15 many medicines she was taking, including Seroquel, Klonopin, Buspar, lorazepam, Benadryl,
16 Meloxicam, and an albuterol inhaler.

17 121. Respondent examined Patient 7 on or about June 14, 2013, and documented his
18 findings in a handwritten, eight-page template History and Physical note. In this note, among
19 other things, Respondent documented the medications Patient 7 was then taking, but did not
20 delineate their dosage and frequency. Respondent diagnosed lumbago, for which he prescribed
21 physical therapy, lumbar x-rays, and medications, namely, hydrocodone/acetaminophen 10/325
22 mg four (4) tablets daily, and Robaxin 750 mg four times daily.

23 122. On his note for Patient 7's visit on or about June 14, 2013, Respondent remarked that
24 her upper extremities exam showed sensation as being normal. Patient 7 had reported on her
25 health history questionnaire that she experienced numbness in her hands due to multiple sclerosis.

26 123. At her visit on June 14, 2013, Respondent also prescribed Patient 7 Lidoderm 5%
27 patches x 30, and carisoprodol 350 mg tablets x 120. These are not reflected in his notes.

28 124. Respondent did not see Patient 7 again until on or about December 27, 2013.

1 125. On or about October 23, 2013, in response to a telephone request from Patient 7,
2 Respondent authorized another hydrocodone/acetaminophen 10/325 mg prescription for fifty-six
3 (56) tablets.

4 126. Respondent did not check a urine drug screen during his treatment of Patient 7.

5 127. Patient 7 was on a complicated regimen of medications, including those prescribed by
6 her primary care physician and Respondent. These included hydrocodone, carisoprodol,
7 clonazepam, and Seroquel. These drugs in combination increase a person's risk for adverse
8 effects, including excessive drowsiness, falls, fractures, impaired breathing, and unintentional
9 overdose. Respondent did not collaborate with Patient 7's primary care physician in regards to
10 her treatment and prescriptions.

11 128. There is no indication in the record that Respondent discussed with Patient 7 the risks
12 of taking an over-the-counter medication with potential sedative effects when combined with
13 other sedatives, like hydrocodone, Soma, clonazepam, and Seroquel.

14 129. Patient 7 was morbidly obese at 6 foot tall, weighing approximately 308 pounds.
15 Respondent did not check her vital signs at either Patient 7's first or second visit.

16 130. Patient 7's history of asthma increased her risk for harm stemming from her use of
17 controlled substances. At a subject interview, Respondent stated that he was not sure whether or
18 not he had listened to Patient 7's lungs. Asthma is not listed under "past medical history" on
19 either of Respondent's notes for Patient 7.

20 131. On or about December 27, 2013, Respondent saw Patient 7 again. Respondent's note
21 for this visit is a two-page, template report on which he made handwritten entries. There is no
22 discussion in the note of why Patient 7 had not returned for a follow-up visit in the previous six
23 months.

24 132. Respondent's office note for Patient 7's visit in December 2013 indicates that he
25 again prescribed hydrocodone/acetaminophen 10/325 mg; however, the frequency is not
26 indicated. Also on this note, Respondent states under "physical exam," "L3 to L5, tender to
27 palpation" (in abbreviated form). The record does not indicate whether this tenderness is
28 bilaterally or otherwise. There is no documentation relative to treatment goals, and no

1 documentation concerning potential side effects from the medications Respondent prescribed to
2 Patient 7.

3 133. Patient 7 passed away on December 28, 2013, and the autopsy report listed her cause
4 of death as "acute hydrocodone intoxication" with contribution from hypertensive cardiovascular
5 disease.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 134. Respondent Jesus Herrera Lao, M.D., is subject to disciplinary action under sections
9 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent
10 committed repeated negligent acts in his care and treatment of Patients 1, 2, 3, 4, 5, 6, and 7, as
11 more particularly alleged hereinafter:

12 135. Paragraphs 35 through 133, above, are hereby realleged and incorporated by this
13 reference as if fully set forth.

14 136. Respondent committed repeated negligent acts in his care and treatment of Patients 1,
15 2, 3, 4, 5, 6, and 7, which included, but are not limited to:

- 16 (a) In regard to each patient, individually, Respondent failed to adequately monitor the
17 patient's treatment with controlled substances; and/or
18 (b) In regard to each patient, individually, Respondent failed to maintain adequate and
19 accurate records of his care and treatment of the patient.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain Adequate and Accurate Records)**

22 137. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
23 defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records
24 relating to the provision of services to Patients 1, 2, 3, 4, 5, 6, and 7, as more particularly
25 described in paragraphs 35 through 133, above, which are hereby incorporated by reference and
26 realleged as if fully set forth herein.

27 ////

28 ////

1 THIRD CAUSE FOR DISCIPLINE

2 (General Unprofessional Conduct)

3 138. Respondent is further subject to disciplinary action under sections 2227 and 2234 of
4 the Code, in that he has engaged in conduct which breaches the rules or ethical code of the
5 medical profession, or conduct that is unbecoming to a member in good standing of the medical
6 profession, and which demonstrates an unfitness to practice medicine. The circumstances are set
7 forth in paragraphs 35 through 137, above, which are hereby incorporated by reference and
8 realleged as if fully set forth herein.

9 PRAYER

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

- 12 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 72729, issued
13 to Respondent Jesus Herrera Lao, M.D.;
- 14 2. Revoking, suspending or denying approval of Respondent Jesus Herrera Lao, M.D.'s
15 authority to supervise physician assistants and advanced practice nurses;
- 16 3. Ordering Respondent Jesus Herrera Lao, M.D., if placed on probation, to pay the
17 Board the costs of probation monitoring; and
- 18 4. Taking such other and further action as deemed necessary and proper.

19 DATED:

20 June 20, 2019

21 
22 KIMBERLY KIRCHMEYER
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
28