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

In the Matter of the Accusation and Petition to Revoke Probation Against: Hector Fernando Rodriguez, M.D. Physician's and Surgeon's Certificate No. A 92346 Respondent.	Case No.: 800-2020-063746

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 August 20, 2021.

IT IS SO ORDERED: July 22, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
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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/Petition to Revoke Probation Against: HECTOR FERNANDO RODRIGUEZ, M.D. 999 E. Valley Blvd., Unit 143 Alhambra, CA 91801-0843 Physician's and Surgeon's Certificate No. A 92346, Respondent.	Case No. 800-2020-063746 OAH No. 2020110606 **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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Trina L. Saunders, Deputy Attorney General.

2. Respondent Hector Fernando Rodriguez, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

3. On or about July 29, 2005, the Board issued Physician's and Surgeon's Certificate No. A 92346 to Hector Fernando Rodriguez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation No. 800-2020-063746, and will expire on December 31, 2022, unless renewed.

JURISDICTION

4. Accusation/Petition to Revoke Probation No. 800-2020-063746 was filed before the Board, and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on May 26, 2020. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation.

5. A copy of Accusation/Petition to Revoke Probation No. 800-2020-063746 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/Petition to Revoke Probation No. 800-2020-063746. Respondent has also carefully read, fully discussed with his 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/Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation/Petition to Revoke Probation No. 800-2020-063746.

10. 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

11. 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.

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2020-063746 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled 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 opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 92346 issued to Respondent Hector Fernando Rodriguez, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for an additional two (2) years, which shall be consecutive to, and shall take effect immediately upon completion of the probation remaining on the Decision and Order in Medical Board Case No. 800-2016-019637.

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 60 hours per year, for each year of probation, 20 hours of which shall be specifically related to professionalism and ethics. 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 85 hours of CME of which 60 hours were in satisfaction of this condition.

Approved education courses completed during the probationary period established in the Decision and Order in Case No. 800-2016-019637 but prior to the effective date of this Stipulated Settlement and Disciplinary Order will be accepted towards the fulfillment of this condition.

2. 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.

3. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

4. 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.

5. 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.

6. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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, subdivision (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.

7. 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.

8. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

9. 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.

10. 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.

11. 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.

12. 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.

13. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2020-063746 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician'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: 6/6/21

HECTOR FERNANDO RODRIGUEZ, M.D.
Respondent

I have read and fully discussed with Respondent Hector Fernando Rodriguez, 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: 06/07/2021

PETER R. OSINOFF, 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: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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I have read and fully discussed with Respondent Hector Fernando Rodriguez, 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: 06/07/2021

PETER R. OSINOFF, 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: June 11, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

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

In the Matter of the Accusation and Petition to Revoke Probation Against: HECTOR FERNANDO RODRIGUEZ, M.D. 6653 Vista Del Mar Playa Del Rey, CA 90293-7543 Physician's and Surgeon's Certificate No. A 92346, Respondent.	Case No. 800-2020-063746 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 29, 2005, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 92346 to Hector Fernando Rodriguez, M.D. (Respondent). The

Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on December 31, 2020, unless renewed.

3. In a disciplinary action titled "In the Matter of Accusation Against Hector Fernando Rodriguez, M.D.," Case No. 800-2014-008536, the Medical Board of California, issued a decision, effective January 29, 2016, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. In a disciplinary action titled "In the Matter of Accusation Against Hector Fernando Rodriguez, M.D.," Case No. 800-2016-019637, the Medical Board of California, issued a decision, effective May 11, 2018, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on an additional two (2) years of probation, which was to be consecutive to the probation that remained on the Decision and Order in Medical Board Case No. 800-2014-008536, with certain terms and conditions, and a fifteen day suspension of his license. A copy of that decision is attached as Exhibit B and is incorporated by reference.

JURISDICTION

5. This Accusation and Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. 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.

7. Section 2306 of the Code, states that if a licensee's right to practice medicine is suspended, he or she shall not engage in the practice of medicine during the term of such

suspension. Upon the expiration of the term of suspension, the certificate shall be reinstated by the Board, unless the licensee during the term of suspension is found to have engaged in the practice of medicine in this state. In that event, the Board shall revoke the licensee's certificate to engage in the practice of medicine.

8. Condition 1 of Respondent's probation states:

"Actual Suspension. As part of probation, Respondent is suspended from the practice of medicine for (15 days) beginning the sixteenth (16th) day after the effective date of this decision."

9. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

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

CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he reused respiratory medical equipment that was intended for single use, without appropriately sterilizing the equipment between uses. The circumstances are as follows:

11. Respondent, an anesthesiologist, was employed by Elite Plastic Surgery, Inc., also known as Hughes Surgery Center. He reused respiratory medical equipment at the surgery center that was purchased as "single use" equipment, including oral airways, and anesthesia machine circuits.

12. On May 30, 2018, a nurse anesthetist, who performed contract work, was performing her duties at Elite Plastic Surgery Center. She observed Respondent's reuse of single use respiratory equipment and reported her concerns to the facility's owner and ultimately filed a complaint with the Institute for Medical Quality, that included this concern, among others.

13. On April 30, 2019, during an interview conducted by an investigator and medical consultant, on behalf of the Medical Board of California, Respondent explained that he reused equipment intended for single use, in order to save costs. He indicated that between uses he cleaned the equipment with a brush, and/or changed the humidifier for the circuits.

14. On June 12, 2018, the Institute for Medical Quality (IMQ) conducted a site visit and inspection of Elite Plastic Surgery, Inc. In IMQ's report dated July 19, 2018, it states that the autoclave logs had not been documented in over 30 days. The last entry in the logs was April 27, 2018.

15. Single use respiratory items, if reused, must go through Sterilization or High Level Decontamination (HLD), which at a minimum, requires soaking in glutaraldehyde or peracetic acid. A humidifier is inadequate for preventing transmission of infection into an anesthetic circuit. Respondent's methods of high level decontamination of the respiratory equipment he reused on patients constitute an extreme departure from the standard of care.

CAUSE TO REVOKE PROBATION

(Practicing During License Suspension)

16. At all times after the effective date of Respondent's probation, Condition One stated:

> As part of probation, Respondent is suspended from the practice of medicine for (15 days) beginning the sixteenth (16th) day after the effective date of the Decision.

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

18. On May 30, 2018, a date during the effective dates of his license suspension, Respondent worked at Elite Surgical Center. Respondent was originally scheduled to be off work on that date. However, due to coverage issues at the surgical center, despite his suspension order, he agreed to come to work on that date. He supervised a nurse anesthetist, who was working as an independent contractor on that date. While at the facility that day he supervised her during procedures that took place, and in one instance he intubated a patient.

19. In violation of Condition One of his probation order Respondent practiced medicine during a period when his license was suspended.

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PRIOR DISCIPLINE

20. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that effective on or about January 29, 2016, in a prior disciplinary action titled "In the Matter of the Accusation Against Hector Fernando Rodriguez, M.D.," before the Medical Board of California, in Case No. 800-2014-008536, Respondent's license was revoked, revocation was stayed and five years probation was imposed against his license due to unprofessional conduct that resulted in discipline, including a summary suspension, against his Nevada medical license. Respondent engaged in disruptive behavior while practicing as an anesthesiologist and refused to submit to drug testing upon the request of his employer. In addition, when seeking employment in Hemet, Nevada he did not disclose the suspension of his license in his application. That decision is now final and is incorporated by reference as if fully set forth.

21. Complainant also alleges that effective on May 11, 2018, in a prior disciplinary action titled "In the Matter of the Accusation Against Hector Fernando Rodriguez, M.D.," before the Medical Board of California, in Case No. 800-2016-019637, Respondent's license was revoked, revocation was stayed and two additional years of probation were added to Respondent's prior probation because he was dishonest on his application for medical privileges as an anesthesiologist at Soma Surgery Center in Beverly Hills, California. He failed to disclose the prior suspension of his privileges at the Valley Health System in Las Vegas or at Hemet Valley Medical Center. Respondent was also suspended from the practice of medicine for fifteen days. That decision is now final and is incorporated by reference as if fully set forth.

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. 800-2016-019637 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 92346 issued to Hector Fernando Rodriguez, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 92346, issued to Hector Fernando Rodriguez, M.D.;

3. Revoking, suspending or denying approval of Hector Fernando Rodriguez, M.D.'s authority to supervise physicians assistants, and advanced practice nurses;

4. Ordering Hector Fernando Rodriguez, M.D. to pay the Medical Board of California if placed on probation, the costs of probation monitoring; and

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

DATED: May 26, 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Final Rodriguez Accusation and Petition to Revoke Probation.docx.docx

Exhibit A

Decision and Order

Medical Board of California Case No. 800-2014-008536

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

In the Matter of the Accusation Against:	)	
Hector Fernando Rodriguez, M.D.	)	**Case No. 800-2014-008536**
Physician's and Surgeon's Certificate No. A 92346	)	
Respondent	)	

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 3, Paragraph No. 8, 6th line, "at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine" is repeated twice within the quote.
2. Page 13, third paragraph, 8th line, "Phases I and I" should be "Phases I and II."
3. Page 14, 3rd line of the Order, the word "years" is missing after "five."

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

This Decision shall become effective at 5:00 p.m. on January 29, 2016.

IT IS SO ORDERED: December 30, 2015.

MEDICAL BOARD OF CALIFORNIA

Howard Krauss, Chair
Panel B

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

In the Matter of the Accusation Against: HECTOR FERNANDO RODRIGUEZ, M.D. Physician's and Surgeon's Certificate No. A92346 Respondent.	Case No. 800-2014-008536 OAH No. 2015070039

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on November 5, 2015.

Emily L. Brinkman, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, the Executive Director of the Medical Board of California, Department of Consumer Affairs.

Liba Agwara, Attorney at Law, represented respondent Hector Fernando Rodriguez, M.D.

The matter was submitted on November 5, 2015.

FACTUAL FINDINGS

License History

1. On July 29, 2005, the Medical Board of California issued Physician's and Surgeon's Certificate No. A92346 to Hector Fernando Rodriguez, M.D. At all times relevant herein, said certificate was in full force and effect and will expire on December 31, 2016, unless renewed or revoked.

2. On September 10, 2005, the Nevada Board of Medical Examiners granted respondent a medical license on condition that he participated in a drug and alcohol diversion

program. Respondent participated in this program for two years. With the exception of self-report by respondent, no evidence was offered to establish the reason for this condition. In addition, no evidence was offered to establish whether respondent complied with this condition. As he maintained this license until order of summary suspension by the Nevada Board of Medical Examiners in 2014, presumably he complied with this condition.

Respondent's Background, Education & Experience

3. Respondent grew up in Los Angeles and completed his undergraduate education at the University of California San Diego. Thereafter he applied for medical school in the United States. After being placed on the "wait list" for medical schools, he completed his medical education at Universidad Autonoma de Guadalajara. He completed the Fifth Pathway Program at New York Medical College, then an internship in general surgery at Catholic Medical Center – Queens Program of New York Medical College, and finally a residency in anesthesia at State University of New York – Brooklyn.

After he completed his residency, respondent returned to the west coast and took a position at a level I trauma center in Las Vegas. Since he did not become board certified in anesthesiology within five years, respondent returned to California. He worked in Bakersfield, Norwalk and Corona as an anesthesiologist. Thereafter, he returned to Las Vegas. After an incident that involved patient death and because of his disruptive behavior and refusal to take a drug test, his employer ordered him to complete the University of California Physician Assessment and Clinical Education Program (PACE Program). His employer reported the foregoing to the Nevada Board of Medical Examiners. Thereafter the Nevada Board of Medical Examiners summarily suspended his license to practice medicine. Thereafter, respondent returned to California, worked at Hemet Valley Medical Center (HVMC). At no time did respondent disclose that his license to practice medicine in Nevada had been suspended. During the background check, this fact came to light, and the job offer was put on hold.

Currently respondent works three days a week at a surgery center, supporting two plastic surgeons, in California.

First Amended Accusation

4. Kimberly Kirchmeyer filed Accusation and First Amended Accusation, Case No. 800-2014-008536, in her official capacity as the Executive Director of the Medical Board of California.

Discipline, Restriction, or Limitation Imposed by Another State (Count 1)

5. On May 28, 2014, respondent's medical staff membership and clinical privileges were summarily suspended at Summerlin Hospital (a Valley Health System

hospital)[1] in Las Vegas, Nevada, when his behavior became disruptive, and he refused to submit to drug testing.

6. On May 29, 2014, respondent's privileges at Desert Springs Hospital, Spring Valley Hospital and Valley Hospital (all Valley Health System hospitals) were summarily suspended based on concerns about respondent's disruptive behavior and his refusal to submit to drug testing.

7. On August 20, 2014, Valley Health Systems held a single Fair Hearing regarding the above-outlined suspensions. Respondent did not appear at the hearing.

8. On August 28, 2014, effective October 7, 2014, the Nevada Board of Medical Examiners issued an Order of Summary Suspension (Nevada Order) regarding respondent's license to practice medicine. In the order the investigative committee (IC) of the Nevada Board of Medical Examiners determined: "that the health, safety and welfare of the public is at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine is at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine in the state of Nevada is necessary to remove the risk of imminent harm to the health, safety and welfare of the public."

9. On November 24, 2014, the Nevada Board of Medical Examiners issued an order extending respondent's summary suspension until he complied with various concerns and conditions that included the following.

- Within one (1) year from the date of this Order, Dr. Rodriguez shall undergo both Phase I and Phase II of the physician assessment at the U.C. San Diego Physician Assessment and Clinical Education Program (PACE Program). This assessment shall include a complete health history, physical examination, and competence and fitness to safely practice anesthesia.

- Within five (5) days of Dr. Rodriguez's or Dr. Rodriguez's representative's receipt of any final or draft report and/or recommendations from the PACE Program, Dr. Rodriguez shall provide the IC[2] with an un-redacted copy of any and all such report and/or recommendations.

- Dr. Rodriguez shall timely and in good faith comply with any and all recommendations of the PACE Program and shall provide the IC with such

[1] Respondent explained that the Valley Health System hospitals in Las Vegas include four hospitals, to wit: Desert Springs Hospital, Valley Hospital, Spring Mountain Hospital and Summerlin Hospital.

[2] Investigative Committee

evidence as the IC shall, in its reasonable discretion, require from an independent third party, verifying Dr. Rodriguez's compliance with the PACE Program recommendations, if any.

- Within six (6) months from the date of this Order, Dr. Rodriguez shall undergo an alcohol, behavioral and drug assessment at a nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians and is sanctioned by the Federation of State Medical Boards (FSMB) or otherwise approved by the IC and/or Board.

- Within five (5) days of Dr. Rodriguez's or Dr. Rodriguez's representative's receipt of any final or draft report and/or recommendations from the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians, Dr. Rodriguez shall provide the IC with an un-redacted copy of any and all such report and/or recommendations.

- Dr. Rodriguez shall timely and in good faith comply with any and all recommendations of the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians and shall provide the IC with such evidence as the IC shall, in its reasonable discretion, require from an independent third party, verifying Dr. Rodriguez's compliance with the recommendations, if any, of the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians.

The Nevada Order further provided that respondent shall pay all costs associated with the requirements of the order and that he will execute all releases necessary to provide the IC and/or Nevada Board of Medical Examiners with the mandated information. Finally, the Order stated:

> Upon verification of Dr. Rodriguez's compliance with the covenants, terms and conditions outlined above, the IC shall timely and in good faith report to the Board Dr. Rodriguez's satisfactory performance and shall recommend that Dr. Rodriguez's license to practice medicine in the state of Nevada be restored to the appropriate licensure status subject to such ongoing monitoring of Dr. Rodriguez's competence and comportment as the Board shall deem appropriate under the totality of circumstances in order to promote and protect the health, safety and welfare of the public.

10. Respondent's conduct and the action of the Nevada Board of Medical Examiners constitute unprofessional conduct.

Dishonesty/False Representation (Count 2)

11. Respondent left Las Vegas to work at Hemet Valley Medical Center (HVMC) because he lost his privileges at Valley Health System hospitals in Las Vegas.

12. On June 6, 2014, respondent applied for medical privileges at Physician's for Health HVMC.

- Part of the application to HVMC required respondent to list all hospitals where he currently had medical privileges. Respondent did not list any of the Valley Health System Hospital facilities in Las Vegas.

- On this application, when asked if he had "ever been refused membership on a hospital medical staff or withdrawn your application for membership upon being informed that it would not be acted upon favorably," respondent answered: "Yes."

- On this application, when asked if he had "ever voluntarily/involuntarily terminated your medical staff membership at any hospital or other healthcare setting," respondent answered: "Yes."

- On this application, when asked if his "request for clinical privileges ever been denied, granted with limitations, or withdrawn upon being informed that it would not be acted upon favorably," respondent answered: "Yes."

- On this application, when asked if his "privileges at any hospital or other healthcare setting [have] ever been suspended, diminished, revoked or not renewed for any reason," respondent answered: "Yes."

- On this application, when asked "whether any such hospital actions were pending against him," respondent answered: "No."

- On this application, when asked if he had "ever voluntarily/involuntarily limited, reduced or withdrawn clinical privileges at any hospital or other healthcare setting," respondent answered: "Yes."

13. For the "Yes" answers, respondent provided a written explanation, to wit:

> I have been declined membership on hospitals' staff, and [sic] forced to resign my privileges from hospitals because I am not Board Certified by the American Board of Anesthesiology due

> to the fact that I am not Board Certified after 5 years of finishing residency. I am, however, Board Eligible/In the System currently with the ABA and am sitting for my written exam July 29, 2014.
>
> I cannot stress enough that my 8 plus years of experience ranging from Level One trauma, to high risk labor and delivery, to pediatrics, spines, neuro, ambulatory care, ASA V patient status should be valued more than my misunderstanding of approaching this exam. Please note that I do have a perfectly clean malpractice history even though I have yet to figure out this written exam.

14. In his application, respondent did not disclose that his privileges to practice at four Valley Health System hospitals were summarily suspended on May 28 and May 29, 2014, as a result of concern about his disruptive behavior and refusal to submit to drug testing.

15. On his application, when asked if any action had ever "been initiated or taken to deny, limit, suspend or revoke" his practice of medicine in any state, respondent answered: "No."

16. On April 29, 2015, an investigator with the Health Quality Investigation Unit on behalf of the Medical Board at the San Bernardino District Office conducted an interview. In addition to the investigator and respondent, present was a deputy attorney general representing complainant. During this interview, respondent admitted that when he was first granted a license by the Nevada Board of Medical Examiners he was required to undergo drug and alcohol testing for the first three years of licensure in Nevada. This amounts to a restriction on his license to practice medicine.[3]

17. During this interview respondent admitted that he knew Summerlin Hospital was conducting a Medical Executive Committee Review of a case involving a patient death and his disruptive behavior. He stated that he left Las Vegas to work at HVMC because he lost his privileges at the Valley Health System hospitals.

18. On October 22, 2014, HVMC suspended respondent's privileges when it learned of the actions taken by the Nevada Board of Medical Examiners and reported this to the Medical Board.

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[3] The Nevada Board of Medical Examiners originally issued respondent a license on September 10, 2005; however this license was contingent on his completion of a drug and alcohol diversion program over the course of three years. During the interview by the investigator on behalf of the medical board, respondent stated three years. During the hearing respondent testified that he spent two years in the program. No documentary evidence was offered to establish whether it was two years or three years.

19. Respondent was dishonest on his application for medical privileges at HVMC

Response to Charges

20. Respondent was questioned about the reason that he was placed in the Nevada Board of Medical Examiners' diversion program. Respondent's answer was inconsistent and evasive.

During the PACE Program behavioral evaluation, when asked why the Nevada Board of Medical Examiners decided to send him to the diversion program, respondent stated that Nevada Board of Medical Examiners discovered the "wet and reckless" on his record, which he had not reported.

During the April 2015 interview by the investigator on behalf of the medical board, respondent stated that he "was not sure" why he was placed in the Nevada Board of Medical Examiners diversion program. He said that when he applied for his medical license in Nevada, they [Nevada Board of Medical Examiners] saw a ticket that was a traffic violation that was alcohol related (in 2004) so they felt he needed to be monitored for alcohol. He said it was pled down to a misdemeanor traffic violation. He said that he did not know if they were testing him for other drugs or not. He described the facts and circumstances underlying the offense. He explained that he was pulled over after working all day on Thanksgiving because the law enforcement officers thought that he had been drinking alcohol. Initially he refused to take the field sobriety test but then agreed to do so. He stated that he failed the test because it was 20 degrees outside.

Respondent testified that he was placed in the diversion program because anesthesiologists are "high risk;" presumably he meant that anesthesiologists were at "high risk" for substance abuse. Further, he stated that he was "accused" of driving under the influence. He admitted that he had two beers about three hours before driving; on the urine test, he had a blood alcohol content level of 0.06 percent.

Regarding whether he was "arrested" for an alcohol related offense, respondent testified that he believed the definition of "arrest" was that he had been booked, put in jail, and convicted. As such, in his opinion, he had not been arrested.

21. Respondent addressed the charges in the First Amended Accusation.

- At the April 2015 interview with the investigator and during the hearing, respondent explained his opinion of the facts and circumstances underlying the incident that resulted in the referral to the PACE Program.

  While respondent was employed by Valley Health System hospitals, an insured homeless alcoholic patient with significant cirrhosis of the liver came into the emergency room of Summerlin Hospital and required a

surgical consult. The patient expired in the post-anesthesia care unit (PACU). He indicated that the surgeon involved in the case was "just out of residency," and the emergency room doctor who took the case "sat on it." In his opinion, he chose the right intervention, despite the patient's death. During the medical executive committee (MEC) meeting regarding the patient death, respondent explained his version of the facts. Based on peer review, the MEC determined that respondent should attend the PACE program. In respondent's opinion, he was "blamed" for the patient death; he felt that he was wrongly accused and was the "scapegoat".

Respondent got legal counsel who advised him not to take a "drug test" unless the surgeon and emergency room doctor was tested also. As a result, respondent refused to take the drug test. Subsequently, respondent agreed to be tested, and all results were negative.

Regarding the allegation of disruptive behavior, respondent testified that there were several incidents with a medical staff administrator and other incidents with an orthopedic surgeon. According to respondent, he was written up for "apparently raising my voice at her [the staff administrator]." So, respondent said that his employer thought that he "needed an evaluation because of raising his voice." Regarding his confrontations with the orthopedic surgeon, respondent testified that he had raised concerns with the surgeon about taking a patient out of the intensive care unit too early.

- Regarding the Fair Hearing held by Valley Health System on August 20, 2014, respondent did not attend because he did not know about the meeting, probably because of a miscommunication with his lawyer.

- On his application for hospital privileges at HVMC, respondent testified that he did not list the Valley Health System facilities because he did not want them to get the wrong impression of him. He had practiced as an anesthesiologist for 10 years. He felt that he was getting a "bad rap" as a consequence of the incidents in Las Vegas. He did not want to give them the impression that he was incompetent because he was not.

- He was aware that his application stated that the information that he contained in the application was true to the best of his knowledge and that it stated that any substantial omissions or misrepresentations could result in denial, modification or revocation of his clinical privileges. However, he never thought that HVMC would suspend his privileges because, in his opinion, he was a valuable asset to the community.

- Despite the fact that his license was suspended in May 2014 and that he submitted the application to HVMC in June 2014, respondent testified that he did not disclose the discipline of his license because his attorney was handling the matter; he was "under the assumption" that the matter before the Nevada Board of Medical Examiners was resolved, that the matter was getting resolved. At no time did respondent inform HVMC that his license had been suspended.

- Respondent successfully completed the PACE Program. The PACE Program issued an assessment report, dated April 22, 2015, that was issued on May 6, 2015. The report includes recommendations including that he participate in an Anger Management class, psychotherapy, a three-month monitoring program with random toxicology screens. Respondent testified that he complied with the recommendations of the PACE Program's assessment report. He provided documentary evidence to establish that he completed the Anger Management class and commenced psychotherapy.

- On August 13, 2015, the Nevada Board of Medical Examiners lifted the summary suspension of respondent's license to practice medicine.

22. Respondent offered no testimonial or documentary evidence to establish that he complied with the remaining terms and conditions in the Nevada Order.

23. In the PACE Program assessment report, the psychologist, who performed the behavioral evaluation, summarized his evaluation of respondent as follows:

> In summary, Dr. Rodriguez is an anesthesiologist who has been reported to the Medical Executive Committee of the hospitals in which he practiced and to the Nevada Medical Board for disruptive behavior and for his standards of practice. He also has a record of having participated in a Diversion program but denies having problems with alcohol. Based on self-report, Dr. Rodriguez does not have a substance abuse problem. However, a thorough substance abuse assessment requires extensive collateral information. A definitive conclusion cannot be based on self-report. Also, Dr. Rodriguez admits to disruptive behavior, albeit justified in his opinion. This is a belief often held by disruptive physicians. It seems, however, that he has at least in one instance attempted to curve [Sic] this behavior, although he may need additional skills. Finally, in dealings both with the Nevada Medical Board and with potential employers, Dr. Rodriguez had exhibited lack of candor. He has tried to justify this fact by implying that he had good reasons to withhold information, given the circumstances.

24. In the PACE Program assessment report, the psychiatrist, who conducted a psychiatric evaluation, opined that respondent is safe to practice medicine and summarized, in pertinent part:

> First, based on the data I am aware of, I have a low suspicion that he has a genuine substance use disorder. It's hard to imagine he would be able to go through two years of a rigorous diversion program with random screening and drug testing, pass this program while working as an anesthesiologist in Las Vegas and have an active, significant substance abuse disorder. Worth noting is that his spotless execution of the mandatory two-year diversion program is by his self-report. He has demonstrated poor judgment in terms of discussing his substance abuse history (i.e. not being fully disclosing) but this does not necessarily point to a substance abuse disorder. Rather, I am of the opinion that this nondisclosing tendency is likely related to his personality style [described below]. On the other hand, it is my opinion that his generally guarded personality style actually just bled over to create the appearance of an issue when there was not one.

In the PACE Program assessment report, the psychiatrist goes into further detail about respondent's personality style.

25. Considering the evidence as a whole, there is no dispute that during the PACE Program psychological and psychiatric evaluations, the interview by the investigator and during the hearing, respondent statements were evasive and lacked candor; however, there is insufficient evidence to establish that he has a substance abuse problem that justifies monitoring by the medical board.

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

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Relevant Statutes

2. Section 2227 of the Business and Professions Code[4] states that a licensee who is found guilty under the Medical Practice Act may have his license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded or have such other action taken in relation to discipline as the medical board deems proper.

3. Section 2305 states:

> The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

4. Section 141 states:

> (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
>
> (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

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[4] Hereinafter all reference is to the Business and Profession Code unless otherwise stated.

5. Section 2234 states, in part:

> 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.
>
> [¶...¶]
>
> (e) The commission of any act involving dishonesty or corruption which [sic] is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct which [sic] would have warranted the denial of a certificate.

6. Section 2261 states:

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

Violations

7. Respondent's conduct and the action of the Nevada Board of Medical Examiners constitute unprofessional conduct within the meaning of Section 2305. This conduct is subject to discipline within the meaning of Section 141, subdivision (a).

8. Respondent's license is subject to disciplinary action under Section 2234, subdivisions (a), (e) and (f) in that respondent was dishonest on his application.

Evaluation

9. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate unfitness to practice. The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect

of the doctor's actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.)

10. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1048.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

11. The medical board issued respondent's Physician's and Surgeon's Certificate 10 years ago. During that time, he has practiced medicine in Nevada and California. Respondent's license was suspended in the State of Nevada based on disruptive behavior and refusal to take a drug test at or about the time of the incident in May 2014. On August 13, 2015, the Nevada Board of Medical Examiners lifted the summary suspension of respondent's license to practice medicine.

Respondent engaged in disruptive behavior while practicing as an anesthesiologist, and he refused to submit to drug testing when requested to do so by his employer. As a consequence his license to practice medicine was suspended until he could complete the PACE Program. He returned to California to practice medicine; he was dishonest and evasive on his application for hospital privileges in California. At no time did he notify the administrators of the HVMC that his license to practice medicine in Nevada had been suspended. Despite discipline by his Nevada employer, suspension of his license to practice medicine in Nevada, evaluation by the PACE Program, successfully passing Phases I and I and some evidence of compliance with the recommendation of the PACE Program, respondent's testimony in this case was evasive and lacking in candor.

Physician honesty is critical. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) "There is no other profession in which one passes so completely within the power and control of another as does the medical patient." (*Shea v. Board of Medical Examiners, supra,* 81 Cal.App.3d at p.578.) "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-3, citing *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

As such, a period of probation with appropriate terms and conditions are necessary to protect the public.

ORDER

Physician's and Surgeon's Certificate Number A 92346 issued to Hector Fernando Rodriguez, M.D. is revoked. However, the order of revocation is stayed, and is placed on probation for five upon the following terms and conditions.

1. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the medical board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed board certified psychiatrist, who shall consider any information provided by the medical board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the medical board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

2. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the medical board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the medical board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the medical or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the medical board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the medical board or its designee. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the medical board shall retain continuing jurisdiction over respondent's license, and the period of probation shall be extended until the medical board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy.

3. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the medical 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 medical 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.

4. 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, 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 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 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 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 medical board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the medical 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 medical 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.

5. Notification

Within seven days of the effective date of this Decision, 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. He shall submit proof of compliance to the medical board or its designee within 15 calendar days.

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

6. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

7. 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.

8. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the medical 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.

9. General Probation Requirements

A. ***Compliance with Probation Unit*** – Respondent shall comply with the medical board's probation unit and all terms and conditions of this Decision.

B. ***Address Changes*** – At all times, respondent shall keep the medical board informed of respondent's business and residence addresses, email address (if available), and telephone number(s). Changes of such addresses shall be immediately communicated in writing to the medical 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, subdivision (b).

C. ***Places of Practice*** - Respondent shall not engage in the practice of medicine in his place of residence. Except as required by Pacific Medical Care Mobile Services, respondent shall not engage in the practice of medicine in a patient's place of residence. Should respondent cease employment with Pacific Mobile Services, respondent

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

D. *License Renewal* - Respondent shall maintain a current and renewed California Physician's and Surgeon's Certificate.

E. *Travel or Residence Outside California* - Respondent shall immediately inform the medical board or its designee, in writing, of travel to any areas outside the jurisdiction of California that lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent leaves the State of California to reside or to practice, respondent shall notify the medical board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. Interview with the Medical Board or Designee

Upon request for interviews, respondent shall be available in person either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. Non-practice While on Probation

Respondent shall notify the medical 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, as defined in Business and Professions Code sections 2051 and 2052, is any period of time that respondent is not practicing medicine in California, for at least 40 hours in a calendar month, in direct patient care, clinical activity or teaching, or other activity as approved by the medical board. All time spent in an intensive training program that has been approved by the medical 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 medical 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, prior to resuming the practice of medicine, respondent shall successfully complete a clinical training program that meets the criteria of Condition 14 of this Order.

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

12. Probation Monitoring Costs

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

13. 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, after giving respondent notice and the opportunity to be heard, the medical board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the medical board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. 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 license. The medical 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, within 15 calendar days, respondent shall deliver his wallet and wall certificate to the medical board or its designee, and he 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.

15. 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.

DATED: December 7, 2015

DocuSigned by:
vallera johnson
241611FC5D26411...

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

Exhibit B

Decision and Order

Medical Board of California Case No. 800-2016-019637

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

In the Matter of the Accusation Against:	)	
Hector Fernando Rodriguez, M.D.	)	Case No. 800-2016-019637
Physician's and Surgeon's Certificate No. A 92346	)	
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 May 11, 2018.

IT IS SO ORDERED: April 13, 2018.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
EMILY L. BRINKMAN
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **HECTOR FERNANDO RODRIGUEZ, M.D.** 1059 S. Sherbourne Dr., Apt. 402 Los Angeles, CA 90035 **Physician's and Surgeon's Certificate No. A 92346** Respondent.	Case No. 800-2016-019637 OAH No. 2017120935 **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 Emily L. Brinkman, Deputy Attorney General.

2. Respondent Hector Fernando Rodriguez, M.D. (Respondent) is represented in this proceeding by attorney, Miguel P. Inumerable, whose address is: 100 N. Barranca Street, #700, West Covina, CA, 91791.

3. On or about July 29, 2005, the Board issued Physician's and Surgeon's Certificate No. A 92346 to Hector Fernando Rodriguez, M.D. (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. 800-2016-019637, and will expire on December 31, 2018, unless renewed.

4. Respondent is currently on probation to the Board pursuant to a Decision effective January 29, 2016, in Case No. 800-2014-008536, under which his certificate was revoked, stayed, subject to five years probation with terms and conditions.

JURISDICTION

5. Accusation No. 800-2016-019637 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 August 14, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 800-2016-019637 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2016-019637. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. 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.

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

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CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2016-019637.

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. 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 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. A 92346 issued to Respondent Hector Fernando Rodriguez, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for an additional two (2) years, which shall be consecutive to the probation remaining on the Decision and Order in Medical Board Case No. 800-2014-

008536, on the following terms and conditions.

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for (15 days) beginning the sixteenth (16th) day after the effective date of this decision.

2. 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 60 hours per year, for each year of probation, 20 hours of which shall be specifically related to professionalism and ethics. 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 85 hours of CME of which 60 hours were in satisfaction of this condition.

Approved education courses completed during the probationary period established in the Decision and Order in Case No. 800-2014-008536 but prior to the effective date of this Stipulated Settlement and Disciplinary Order will be accepted towards the fulfillment of this condition.

3. 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 1358.1. 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.

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.

An approved professionalism program completed during the probationary period established in the Decision and Order in Case No. 800-2014-008536 but prior to the effective date of this Stipulated Settlement and Disciplinary Order will be accepted towards the fulfillment of this condition.

4. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist with any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. Over the course of probation, the Board or its designee may require Respondent to undergo psychiatric evaluations (and psychological testing if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or its designee and any other information the evaluator deems relevant. The evaluator shall furnish a written evaluation report to the Board or its designee.

If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines

that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations and testing.

5. 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.

6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. 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.

8. 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.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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.

10. 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.

11. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training

program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

12. 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.

13. 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.

14. 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.

15. 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 Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney Miguel P. Enumerable. 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: 2/22/18

HECTOR FERNANDO RODRIGUEZ, M.D.
Respondent

I have read and fully discussed with Respondent HECTOR FERNANDO RODRIGUEZ, 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: 2/24/18

MIGUEL P. INUMERABLE
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

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I have read and fully discussed with Respondent HECTOR FERNANDO RODRIGUEZ, 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: _____

MIGUEL P. INUMERABLE
Attorney for Respondent

ENDORSEMENT

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

Dated: 2/26/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 14 20 17
BY D. Richards ANALYST

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

In the Matter of the Accusation Against: **Hector Fernando Rodriguez, M.D.** 1059 S. Sherbourne Dr., Apt. 402 Los Angeles, CA 90035 **Physician's and Surgeon's Certificate No. A92346,** Respondent.	Case No. 800-2016-019637 **ACCUSATION**

Complainant alleges:

PARTIES

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 29, 2005, the Medical Board issued Physician's and Surgeon's Certificate Number A92346 to Hector Fernando Rodriguez, 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 December 31, 2018, unless renewed. On August 28, 2015, a First Amended Accusation was filed in Case No. 800-2014-008536. On January 29, 2016, the

Decision became effective under which Respondent's Physician's and Surgeon's Certificate was revoked, stayed, subject to five years' probation with terms and conditions.

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 Board deems proper.

5. Section 2234 of the Code, states in relevant part:

"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:

"(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."

6. Section 2261 of the Code, states in relevant part:

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

PRIOR DISCIPLINE

7. On May 28 and 29, 2014, Respondent's medical staff membership and clinical privileges were suspended at the Valley Health System hospitals in Las Vegas, Nevada, in response to disruptive behavior and refusal to submit to drug testing.

8. On August 28, 2014, the Nevada Board of Medical Examiners (Nevada Board) issued an Order of Summary Suspension regarding Respondent's license to practice medicine, which the Nevada Board extended on November 24, 2014.

9. On June 6, 2014, Respondent applied for medical privileges at Hemet Valley Medical Center (HVMC). Respondent did not disclose the suspension of his privileges at the Valley

Health System hospitals. HVMC then suspended Respondent's privileges to practice medicine on October 22, 2014 when it learned that the Nevada Board suspended his privileges to practice medicine in that state.

10. On December 12, 2014, the Board filed an Accusation in Case No. 800-2014-008536 against Respondent alleging the out of state discipline taken by the Nevada Board.

11. On August 28, 2015, the Board filed a First Amended Accusation, Case No. 800-2014-008536, that added allegations of dishonesty in failing to disclose the suspension of his privileges at the Valley Health System hospitals in Las Vegas, Nevada on his application for privileges with HVMC.

12. On January 29, 2016, the Decision became effective under which Respondent's Physician's and Surgeon's Certificate was revoked, stayed, subject to five years' probation with terms and conditions.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonesty; and/or False Representation)

13. Respondent Hector Fernando Rodriguez, M.D. is subject to disciplinary action under section 2234, and/or 2234(e), and/or 2261 in that Respondent was dishonest on his application for medical privileges as an anesthesiologist at Soma Surgery Center (SSC) in Beverly Hills, California, as detailed below, and incorporating paragraphs 7 through 12 by reference. The circumstances are as follows:

14. On or about June 23, 2015, Respondent applied for medical privileges at SSC.

15. The application asked: "Have your clinical privileges ever been revoked, suspended or reduced." Respondent replied "yes" because "I am not yet board certified." Respondent did not list the suspension of his privileges at the Valley Health System in Las Vegas or at Hemet Valley Medical Center.

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16. Respondent answered "No" to the question whether any limitations or conditions had ever been placed on his Medical License. He failed to list the suspension by the Nevada Medical Board on the application.[1]

17. When asked "have you ever had denial, suspension, limitations, termination or non-renewal of professional privileges at any surgery center, hospital, or other institutions, Respondent answered "yes" and explained "b/c [because] I am not board certified & 5 years out of residency." Respondent failed to disclose that his privileges at Valley Health System and HVMC were suspended.

18. In response to the question "have you had any adverse reports filed against you by local, state, or national society, or licensure board?" Respondent answered "No." Respondent failed to report the suspension by the Nevada Medical Board and the pending Accusation No. 800-2014-008536 filed by the Medical Board.

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 A92346, issued to Hector Fernando Rodriguez, M.D.;

2. Revoking, suspending or denying approval of Hector Fernando Rodriguez, M.D.'s authority to supervise physician assistants and advanced practice nurses;

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[1] The Nevada Board originally issued Respondent a license to practice medicine on September 10, 2005; however, this license was contingent on his completion of a drug an alcohol diversion program over the course of three years. Respondent did not disclose the conditions of his license on the SSC application either.

3. Ordering Hector Fernando Rodriguez, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and.

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

DATED: August 14, 2017

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

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