

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

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

Gabriel H. Patino, M.D.

**Physician's and Surgeon's
Certificate No. A 44315**

Case No.: 800-2018-048583

Respondent.

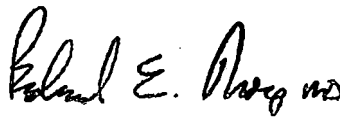
DECISION

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, 2022.

IT IS SO ORDERED: April 11, 2022.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

13 **GABRIEL H. PATINO, M.D.**
14 **6328 Fairmount Ave. Ste. 100**
El Cerrito CA 94530

15 **Physician's and Surgeon's Certificate No. A**
16 **44315**

17 Respondent.

Case No. 800-2018-048583

OAH No. 2021110691

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 First Amended Accusation.

24 **PARTIES**

25 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27
28

1 matter by Rob Bonta, Attorney General of the State of California, by Greg W. Chambers, Deputy
2 Attorney General.

3 2. Respondent Gabriel H. Patino, M.D. (Respondent) is represented in this proceeding
4 by attorney Adriana C. Cervantes, Esq., whose address is: 400 Capitol Mall, Twenty-Second
5 Floor, Sacramento, CA 95814.

6 3. On or about December 14, 1987, the Board issued Physician's and Surgeon's
7 Certificate No. A 44315 to Respondent. The Physician's and Surgeon's Certificate was in full
8 force and effect at all times relevant to the charges brought in First Amended Accusation No.
9 800-2018-048583, and will expire on May 31, 2023, unless renewed.

10 JURISDICTION

11 4. Accusation No. 800-2018-048583 was filed before the Board. The Accusation and all
12 other statutorily required documents were properly served on Respondent on May 7, 2021.
13 Respondent timely filed his Notice of Defense contesting the Accusation. On January 6, 2022,
14 the Board filed and served the First Amended Accusation.

15 5. A copy of First Amended Accusation No. 800-2018-048583 is attached as exhibit A
16 and incorporated herein by reference.

17 ADVISEMENT AND WAIVERS

18 6. Respondent has carefully read, fully discussed with counsel, and understands the
19 charges and allegations in the First Amended Accusation No. 800-2018-048583. Respondent has
20 also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated
21 Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 800-2018-048583, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the First Amended Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in First Amended Accusation No. 800-2018-048583, a true and correct copy of which is attached hereto as Exhibit A, shall be deemed true, correct, and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

12. Respondent agrees that his Physician's and Surgeon's Certificate, No. A 44315, 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

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

1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 14. Respondent agrees that if he ever petitions for early termination or modification of
4 probation, or if an accusation and/or petition to revoke probation is filed against him before the
5 Board, all of the charges and allegations contained in First Amended Accusation No. 800-2018-
6 048583 shall be deemed true, correct and fully admitted by respondent for purposes of any such
7 proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 44315 issued
16 to Respondent GABRIEL H. PATINO is revoked. However, the revocation is stayed and
17 Respondent is placed on probation for thirty-five (35) months on the following terms and
18 conditions:

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

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

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

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

18 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
19 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
20 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
21 Respondent shall participate in and successfully complete that program. Respondent shall
22 provide any information and documents that the program may deem pertinent. Respondent shall
23 successfully complete the classroom component of the program not later than six (6) months after
24 Respondent's initial enrollment, and the longitudinal component of the program not later than the
25 time specified by the program, but no later than one (1) year after attending the classroom
26 component. The professionalism program shall be at Respondent's expense and shall be in
27 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

28 A professionalism program taken after the acts that gave rise to the charges in the First

1 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
2 the Board or its designee, be accepted towards the fulfillment of this condition if the program
3 would have been approved by the Board or its designee had the program been taken after the
4 effective date of this Decision.

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

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

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

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

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

23 7. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
24 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
25 limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena
26 enforcement, as applicable, in the amount of \$3,626.26 (three thousand six hundred twenty-six
27 dollars and twenty-five). Costs shall be payable to the Medical Board of California. Failure to
28 pay such costs shall be considered a violation of probation.

1 Any and all requests for a payment plan shall be submitted in writing by respondent to the
2 Board.

3 The filing of bankruptcy by Respondent shall not relieve respondent of the responsibility to
4 repay investigation and enforcement costs, including expert review costs.

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

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

10 9. GENERAL PROBATION REQUIREMENTS.

11 Compliance with Probation Unit

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

13 Address Changes

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

19 Place of Practice

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

23 License Renewal

24 Respondent shall maintain a current and renewed California physician's and surgeon's
25 license.

26 Travel or Residence Outside California

27 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
28 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty

1 (30) calendar days.

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

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

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

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

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

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

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

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

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

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

27 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
28 with probation monitoring each and every year of probation, as designated by the Board, which

1 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
2 California and delivered to the Board or its designee no later than January 31 of each calendar
3 year.

4 16. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
5 a new license or certification, or petition for reinstatement of a license, by any other health care
6 licensing action agency in the State of California, all of the charges and allegations contained in
7 First Amended Accusation No. 800-2018-048583 shall be deemed to be true, correct, and
8 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
9 seeking to deny or restrict license.

10 ACCEPTANCE

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

16
17 DATED: _____

18 GABRIEL H. PATINO, M.D.
Respondent

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

22 DATED: _____

23 ADRIANA C. CERVANTES, ESQ.
Attorney for Respondent

24 ///

25 ///

26 ///

27 ///

28 ///

2 California and delivered to the Board or its designee no later than January 31 of each calendar
3 year.

4 16. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
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8 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
9 seeking to deny or restrict license.

10 ACCEPTANCE

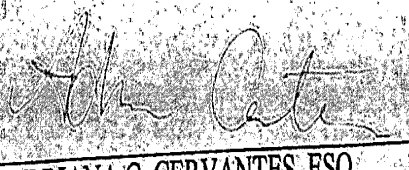
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13 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
15 bound by the Decision and Order of the Medical Board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

16
17 DATED: 3/11/2022


GABRIEL H. PATINO, M.D.
Respondent

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

22 DATED: 3/11/2022


ADRIANA C. CERVANTES, 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: March 11, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General



GREG W. CHAMBERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

1 ROB BONTA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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Attorneys for Complainant

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12 In the Matter of the First Amended Accusation
Against:

Case No. 800-2018-048583

13 **GABRIEL H. PATINO, M.D.**
14 **6328 Fairmount Ave., Ste. 100**
15 **El Cerrito, CA 94530**

FIRST AMENDED ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. A 44315,**

Respondent.

18
19 **PARTIES**

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

23 2. On December 14, 1987, the Board issued Physician's and Surgeon's
24 Certificate Number A 44315 to Gabriel H. Patino, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on May 31, 2023, unless renewed.

27 ///

28 ///

JURISDICTION

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

4. Section 125.3 of the Code states that:

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

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

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

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

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

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive

1 proof of the validity of the order of payment and the terms for payment.

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

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

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

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

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

15 5. Section 2220 of the Code states:

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

22 (a) Investigating complaints from the public, from other licensees, from health care
23 facilities, or from the Board that a physician and surgeon may be guilty of
24 unprofessional conduct. The Board shall investigate the circumstances underlying a
25 report received pursuant to Section 805 or 805.01 within 30 days to determine if an
26 interim suspension order or temporary restraining order should be issued. The Board
27 shall otherwise provide timely disposition of the reports received pursuant to Section
28 805 and Section 805.01.

1 (b) Investigating the circumstances of practice of any physician and surgeon where
2 there have been any judgments, settlements, or arbitration awards requiring the
3 physician and surgeon or his or her professional liability insurer to pay an amount in
4 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with
5 respect to any claim that injury or damage was proximately caused by the physician's
6 and surgeon's error, negligence, or omission.

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

10 6. Section 2234 of the Code, states:

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

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

16 (b) Gross negligence.

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

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

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

28 (d) Incompetence.

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

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

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

7 7. Section 651 of the Code, states in part:

8 (a) It is unlawful for any person licensed under this division or under any initiative act
9 referred to in this division to disseminate or cause to be disseminated any form of
10 public communication containing a false, fraudulent, misleading, or deceptive
11 statement, claim, or image for the purpose of or likely to induce, directly or indirectly,
12 the rendering of professional services or furnishing of products in connection with the
13 professional practice or business for which he or she is licensed. A "public
14 communication" as used in this section includes, but is not limited to, communication
15 by means of mail, television, radio, motion picture, newspaper, book, list or directory
16 of healing arts practitioners, Internet, or other electronic communication.

17 **COST RECOVERY**

18 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

24 **FACTUAL ALLEGATIONS**

25 9. On January 9, 2017, Respondent performed an augmentation mammoplasty on
26 Patient 1¹ at the Cosmetic Surgical Center of El Cerrito, which Respondent operated.

27 ¹ Patients are identified by number and other individuals are identified by initials to
28 protect patient and personal privacy. Respondent may learn the names of the patients and
individuals through the discovery process.

10. Patient 1 was noted to be ASA II² due to prior treatment for hypertension and diabetes, but there was no anesthesiologist/anesthetist or Registered Nurse present for the medical procedure.

11. During the course of the procedure, Patient 1's vitals were only monitored every 15 minutes. Additionally, no IV was inserted for the procedure, even though bleeding and pneumothorax³ are both known complications of augmentation mammoplasty.

12. On January 26, 2017, Patient 1 underwent a second surgery at the Cosmetic Surgical Center of El Cerrito; this time for bilateral breast reconstruction, right crescent breast lift, bilateral internal lifts and bilateral muscle capsule release. Respondent assisted Dr. J.B. during this procedure. Again, no anesthesiologist/anesthetist or Registered Nurse was present for the surgery, Patient 1's vitals were only monitored every 15 minutes, and no IV was inserted for the procedure.

13. Respondent's website promoting his business declared that Respondent had "Five Specialties." However, there is insufficient evidence to support Respondent's claim of having five medical specialties.

CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Gross Negligence; Repeated Negligent Acts; False or Misleading Information)

14. Respondent Gabriel H. Patino, M.D. is subject to disciplinary action pursuant to Code sections 2234 and/or 2234(b) and/or 2234(c), and 651 in that Respondent engaged in unprofessional conduct and was grossly negligent, and/or repeatedly negligent during the care and treatment of Patient 1, by performing a surgical procedure on a patient classified as ASA II without an anesthesiologist/anesthetist or Registered Nurse present, only monitoring that patient's vitals every 15 minutes, failing to insert an IV; and for disseminating false or misleading information concerning professional services.

² American Society of Anesthesiologists classification – ASA II – a patient with mild systemic disease. Mild diseases only without substantive functional limitations. Current smoker, social alcohol drinker, pregnancy, obesity (30<BMI<40), well-controlled DM/HTN, mild lung disease.

³ Collapsed lung.

1 PRAYER

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

4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 44315,
5 issued to Respondent Gabriel H. Patino, M.D.;

6 2. Revoking, suspending or denying approval of Respondent Gabriel H. Patino, M.D.'s
7 authority to supervise physician assistants and advanced practice nurses;

8 3. Ordering Respondent Gabriel H. Patino, M.D., to pay the Board the costs of the
9 investigation and enforcement of this case, and if placed on probation, the costs of probation
10 monitoring; and

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

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13 DATED: JAN 0 6 2022

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15 WILLIAM PRASIFKA
16 Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant
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