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

In the Matter of the Third Amended Accusation Against: **Joseph Roderick Altamirano, M.D.** **Physician's and Surgeon's Certificate No. G 63870** **Respondent.**	**Case No. 800-2014-007084**

DECISION

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 5, 2023.

IT IS SO ORDERED December 6, 2022.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the Third Amended Accusation Against:

JOSEPH RODERICK ALTAMIRANO, M.D.,

Physician's and Surgeon's Certificate No. G63870,

Respondent.

Agency Case No. 800-2014-007084

OAH No. 2022020476

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 3, 2022. William Prasifka (Complainant) was represented by Trina L. Saunders, Deputy Attorney General. Steven Finley, Attorney at Law, represented Joseph Roderick Altamirano, M.D. (Respondent), who was not present.

Documents were received in evidence. The record closed and the matter was submitted for decision on October 3, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 29, 1988, the Board issued Physician's and Surgeon's Certificate Number G 63870 (license) to Respondent. That license is scheduled to expire on April 30, 2024.

2. On March 1, 2022, Complainant filed the Third Amended Accusation while acting in his official capacity as the Executive Director of the Board. Respondent filed a Notice of Defense requesting a hearing. Jurisdiction to proceed with this hearing has been established.

Respondent's Criminal Conviction

3. On June 11, 2015, in a United States District Court criminal proceeding entitled *United States of America v. Joseph R. Altamirano* (C.D Cal., Case No. CR 15-0321), Respondent was indicted for conspiracy to commit health care fraud (18 U.S.C. § 1349) and two counts of health care fraud (18 U.S.C. § 1347). On October 11, 2016, a First Superseding Indictment was filed. Respondent was indicted on one count of conspiracy to commit health care fraud (18 U.S.C. § 1349), and six counts of health care fraud (18 U.S.C. §§ 1347, 2(b)).

4. On December 4, 2017, Respondent pled guilty to Count 1 of the First Superseding Information (conspiracy to distribute controlled substances, 21. U.S.C. § 846) and to Count 1 of the First Superseding Indictment (conspiracy to commit health care fraud, 18 U.S.C. § 1349). The Court questioned Respondent about his guilty plea, found it knowledgeable and voluntary, and ordered the plea accepted and entered.

5. On August 23, 2019, Defendant was sentenced to be committed to the custody of the Bureau of Prisons for 48 months commencing January 23, 2020. He was also ordered to pay a special assessment of $200 and restitution in the amount of $4,334,464. Upon release from imprisonment, Respondent was to be placed on supervised release for five years, on terms and conditions which included: refraining from the use of alcohol and illicit drugs; refraining from the unlawful use of controlled substances and from abuse of prescription medications; submitting to periodic drug tests, not to exceed eight tests per month, as directed by his probation officer; and participating in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath, or sweat patch testing, as directed by his probation officer.

6. Respondent's criminal conviction was based, in part, on the following facts:

A. Medicare is a federal health care benefit program that, among other things, reimburses providers who render medical care to Medicare beneficiaries, typically persons 65 years of age and older.

B. Licensed physicians and surgeons who obtain a Medicare Provider Number may submit claims to Medicare for reimbursement.

C. Respondent obtained a Medicare Provider Number.

D. Respondent owned and operated a medical clinic in Los Angeles (Altamirano clinic).

E. Beginning around 2005 and continuing through 2015, Respondent knowingly conspired with others and agreed to commit health care fraud.

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F. In about January 2005, Respondent opened a bank account at Washington Mutual Bank (WaMu account). Respondent was initially the sole signatory on the WaMu account.

G. In about February 2005, Respondent began submitting reimbursement claims to Medicare for medical services allegedly rendered by him to qualified Medicare beneficiaries.

H. Respondent deposited into the WaMu account funds paid to him by Medicare pursuant to his submitted claims.

I. In about August 2011, Respondent opened a bank account at Wells Fargo Bank (Wells account). Respondent was one of several signatories on the Wells account.

J. In about 2013, Respondent submitted to Medicare a re-evaluation application for the Altamirano clinic. In this application, Respondent listed himself as an individual practitioner and the sole contact for the Altamirano clinic.

K. To entice prospective Medicare beneficiaries to visit the Altamirano clinic, marketers promised them free vitamins. When the prospective Medicare beneficiaries arrived at the Altamirano clinic, Respondent and others working for him wrote unnecessary prescriptions and provided medically unnecessary services. Respondent often did not physically examine the Medicare beneficiaries or meet them at all.

L. Respondent and his co-conspirators submitted reimbursement claims to Medicare for the unnecessary prescriptions and unnecessary medical services.

M. Between January 2006 and September 2014, Respondent and his co-conspirators submitted, or caused to be submitted, to Medicare reimbursement claims totaling approximately $8,597,137.

N. To conceal the fraudulent claims, Respondent falsified, and caused to be falsified, patient charts to document services the Medicare beneficiaries did not actually receive from Respondent and medical conditions the Medicare beneficiaries were not experiencing.

7. Respondent did not appear at the administrative hearing. No evidence of rehabilitation was submitted.

Costs

8. Complainant submitted as evidence of the costs of prosecution of this matter declarations of Deputy Attorney General Trina L. Saunders (DAG). The DAG's declarations indicate the Department of Justice (DOJ), Office of the Attorney General billed the Board $4,510 in prosecution costs through September 30, 2022.

9. The total costs of prosecution incurred by the Board were $4,510. These costs are reasonable.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal -- so clear as to leave no substantial doubt and sufficiently strong to

command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. The Board has the authority to revoke or suspend a physician's license for engaging in unprofessional conduct. (Bus. & Prof. Code, §§ 2004, 2234.) Unprofessional conduct includes incurring a criminal conviction substantially related to the qualifications, functions, or duties of a physician (Bus. & Prof. Code, § 2236).

3. California Code of Regulations, title 16, section 1360 provides, in pertinent part:

> [A] crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

4. Conspiracy to commit health care fraud demonstrates a propensity for deceit while working as a physician. Such professional dishonesty evidences a potential unfitness to practice medicine and is substantially related to the qualifications, functions, and duties of a physician. Additionally, conspiracy to distribute controlled substances evidences a potential unfitness to practice medicine and is substantially related to the qualifications, functions, and duties of a physician.

5. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234 and

2236, and California Code of Regulations, title 16, section 1360, on the grounds that Respondent has been convicted of crimes substantially related to the qualifications, functions and duties of a licensed physician and surgeon, as set forth in Factual Findings 3 through 6.

6. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover the reasonable costs of enforcement of this matter. Complainant has incurred reasonable costs in the amount of $4,510 as set forth in Factual Findings 8 and 9. Consequently, Respondent shall be required to pay the costs of enforcement of this matter in the amount of $4,510.

7. To determine the appropriate level of discipline for Respondent's violations, the Board considers factors set forth in statutes and regulations.

8. Pursuant to California Code of Regulations, title 16, section 1360.1:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
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> (a) The nature and severity of the act(s) or offense(s).
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> (b) The total criminal record.
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> (c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

9. Business and Professions Code section 2229 provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee.

10. Business and Professions Code section 2227, subdivision (a), provides:

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

accordance with the provisions of this chapter:

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

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

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

(4) Be publicly reprimanded by the division.

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

11. California Code of Regulations, title 16, section 1361, provides in pertinent part:

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the [Board] shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) [(Guidelines)] which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by

> adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation[.]

12. For criminal convictions arising from patient treatment and billing, the Guidelines recommend discipline ranging from seven years' probation to license revocation. In this case, Respondent's conspiracy to commit health care fraud was an egregious breach of public trust. His deceit spanned almost a decade and terminated relatively recently. Respondent was to begin serving his 48-month prison sentence on January 23, 2020. The evidence at hearing failed to establish Respondent's release from prison, compliance with the terms of supervised release, or rehabilitative efforts.

13. Given the gravity of Respondent's crimes and the lack of rehabilitation evidence, revocation of Respondent's license is warranted to protect the public.

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ORDER

1. Physician's and Surgeon's Certificate Number G 63870, issued to Respondent, Joseph Roderick Altamirano, M.D., is revoked.

2. If Respondent later applies for a physician's and surgeon's certificate or reinstatement of his revoked license, Respondent shall reimburse the Board $4,510 for its prosecutorial costs in this case, before reinstatement or issuance of any physician's and surgeon's certificate or as the Board in its discretion may otherwise order.

DATE: 10/25/2022

Julie Cabos-Owen

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings