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

In the Matter of the Accusation Against: Pedro Soriano Alupay, Jr., M.D. Physician's and Surgeon's Certificate No. A 40750 Respondent.	Case No.: 800-2019-056733

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 January 13, 2023.

IT IS SO ORDERED: December 15, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
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Attorneys for Complainant

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

In the Matter of the Accusation Against: PEDRO SORIANO ALUPAY, JR., M.D. 16702 Valley View Avenue La Mirada, CA 90638 Physician's and Surgeon's Certificate No. A 40750, Respondent.	Case No. 800-2019-056733 OAH No. 2022060808 **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 Rebecca L. Smith, Deputy Attorney General.

2. Pedro Soriano Alupay, Jr., M.D. (Respondent) is represented in this proceeding by attorney Kevin D. Cauley, whose address is 624 South Grand Avenue 22 floor Los Angeles, California 90017.

3. On or about April 2, 1984, the Board issued Physician's and Surgeon's Certificate No. A 40750 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-056733, and will expire on May 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-056733 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 May 25, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-056733 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-056733. 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; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2019-056733, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2019-056733, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 40750 to disciplinary action.

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. 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 No. 800-2019-056733 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.

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.

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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 Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 40750 issued to Respondent Pedro Soriano Alupay, Jr., M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. EDUCATION COURSE. Within sixty (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 forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

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

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

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

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

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

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

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

4. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (60) calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Respondent's practice setting changes and Respondent is no longer practicing in a setting in compliance with this Decision, Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (60) calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

5. NOTIFICATION. Within seven (7) 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. Respondent shall submit proof of compliance to the Board or its designee within fifteen (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. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, in the amount of $19,490.40 (nineteen thousand four hundred ninety dollars and forty cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within thirty (30) calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs.

9. 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 ten (10) calendar days after the end of the preceding quarter.

10. 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 thirty (30) calendar days prior to the dates of departure and return.

11. 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.

12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (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 forty (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 eighteen (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.

13. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than one hundred twenty (120) calendar days prior to the completion of probation. This term does not include cost recovery, which is due within thirty (30) calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

14. 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.

15. 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 fifteen (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.

16. 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.

17. 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 No. 800-2019-056733 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, Kevin D. Cauley. 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: 10/24/22

PEDRO SORIANO ALUPAY, JR., M.D.
Respondent

I have read and fully discussed with Respondent Pedro Soriano Alupay, Jr., 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: 10-24-22

KEVIN D. CAULEY
Attorney for Respondent

ENDORSEMENT

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

DATED: 10/24/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-056733

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

In the Matter of the Accusation Against:	Case No. 800-2019-056733
PEDRO SORIANO ALUPAY, JR., M.D. **16702 Valley View Avenue** **La Mirada, CA 90638** **Physician's and Surgeon's Certificate No. A 40750,** Respondent.	**A C C U S A T I O N**

PARTIES

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

2. On or about April 2, 1984, the Board issued Physician's and Surgeon's Certificate Number A 40750 to Pedro Soriano Alupay, Jr., 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 May 31, 2023, unless renewed.

JURISDICTION

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

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. Section 2220 of the Code states:

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

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

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

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

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6. Section 2227 of the Code states:

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

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

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

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

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

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

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

7. 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 that 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.

8. Section 2266 of the Code states:

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

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9. Section 4021 of the Code states:

"Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

10. Section 4022 of the Code provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

DRUG DEFINITIONS

11. As used herein, the terms below will have the following meanings:

"Acetaminophen and codeine," also known by the brand names Tylenol with Codeine No. 3 and Tylenol with Codeine No. 4, is an opioid pain reliever. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(2) and a dangerous drug pursuant to Business and Professions Code section 4022.

"Carisoprodol," also known by the brand name Soma, is a muscle-relaxant. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(18), and a dangerous drug pursuant to Code section 4022.

"CURES" means the Department of Justice, Bureau of Narcotics Enforcement's California Utilization, Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, III, IV and V controlled substances dispensed to patients in California pursuant to Health and Safety Code section 11165. The CURES database captures data from controlled substance prescriptions filled as submitted by pharmacies, hospitals, and dispensing physicians. Law enforcement and regulatory agencies use the data to assist in their efforts to control the diversion and resultant abuse of controlled substances. Prescribers and pharmacists may request a patient's history of controlled substances dispensed in accordance with guidelines developed by the Department of Justice.

"Gabapentin" is an anticonvulsant medication used to treat partial seizures, neuropathic pain, hot flashes, and restless legs syndrome. It can have potentially harmful effects when combined with opioids. It is a dangerous drug as defined in Code section 4022.

"Hydrocodone-acetaminophen," also known as Norco, is an opioid pain medication. It has a high potential for abuse. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drug pursuant to Code section 4022.

"Lidocaine patch" is an anesthetic that works to decrease pain by temporarily numbing the area. It causes loss of feeling in the skin and surrounding tissues. It is a dangerous drug pursuant to Business and Professions Code section 4022.

"Morphine milligram equivalents" (MME) or "Morphine equivalent doses" (MED), developed by the Centers for Disease Control and Prevention (CDC), are values that represent the potency of an opioid dose relative to morphine. MME or MED are intended to help clinicians make safe, appropriate decisions concerning opioid regimens. They are used as a gauge of the overdose potential of the amount of opioid prescribed. Higher dosages of opioids are associated with higher risk of overdose and death. Calculating the total daily dosage of opioids assists in minimizing the potential for prescription drug abuse/misuse and reducing the number of unintentional overdose deaths associated with pain medications.

"Methcarbamol" is a muscle relaxant. Like other muscle relaxers, abuse and dependence may occur with long-term use and lead to addictive habits. It is a dangerous drug as defined in Code section 4022.

"Tramadol" is a synthetic pain medication used to treat moderate to moderately severe pain. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (c)(2), and a dangerous drug pursuant to Code section 4022.

"Tizanidine," also known by the brand name Zanaflex, is a muscle relaxant. Like other muscle relaxers, abuse and dependence may occur with long-term use and lead to addictive habits. It is a dangerous drug as defined in Code section 4022.

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COST RECOVERY

12. Section 125.3 of the Code states:

(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 licensee 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 proof of the validity of the order of payment and the terms for payment.

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

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

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

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

(j) This section does not apply to any board if a specific statutory provision in

that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

13. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he engaged in gross negligence in the care and treatment of Patients 1 and 2.[1] The circumstances are as follows:

PATIENT 1:

14. From August 18, 2014 to June 29, 2017 Respondent provided care and treatment to Patient 1, a 68 year-old male, who suffered a work-related injury to his back and shoulder on March 2, 2012. Patient 1's work-related injury was covered by the State of California Division of Workers' Compensation (CDWC). The patient was seen approximately once a month by Respondent from August 2014 to October 2015. There was an unexplained nine-month gap in the records until the patient returned on July 14, 2016. Thereafter, monthly visits resumed until the last date of service on June 29, 2017. During the periods that Respondent treated Patient 1, he documented seeing the patient on a monthly basis and submitted progress reports to CDWC.

15. At the time of Patient 1's first visit with Respondent on August 18, 2014, Respondent Patient 1 complained of intermittent low back pain that increased while standing or sitting for long periods. Respondent examined the patient and noted that the patient's straight leg raise was positive, he had bilateral tenderness on the lumbar spine and had limited range of motion. Respondent prescribed 120 tablets of Norco, 90 tablets of Soma, and 60 tablets of Motrin. He also recommended a lumbar epidural steroid injection. Respondent did not document patient education or instructions for opioid therapy nor did he document consent for treatment.

16. On September 11, 2014, Respondent noted that the patient had the same problems as the last visit and that his pain radiated more on his left extremity than right. In addition, he had multiple levels of lumbar spine disc herniation and lumbar spine radiculopathy. He noted that he would prescribe the same medications as the previous visit and instructed the patient to follow-up

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[1] The patients herein are referred to as Patients 1 and 2 in order to protect their privacy.

in four weeks. Respondent did not document patient education or instructions for opioid therapy nor did he document consent for treatment.

17. On October 23, 2014, Respondent noted that the patient underwent a lumbar epidural steroid injection on October 7, 2014, and that it provided relief. Respondent noted that a urine toxicology screen was performed to monitor Patient 1's compliance with his pharmaceutical treatment regimen. The results of the urine toxicology screen were not documented. Respondent prescribed 120 tablets of Norco, 90 tablets of Soma, and 60 tablets of Motrin. He instructed the patient to return in four weeks. Respondent did not document patient education or instructions for opioid therapy nor did he document consent for treatment.

18. Respondent continued to see Patient 1 on a monthly basis and prescribed 120 tablets of Norco and 90 tablets Soma for the patient's lower back pain until October 22, 2015. At no time did Respondent document patient education or instructions for opioid therapy or consent for treatment. Respondent's physical examinations were limited to the areas of pain.

19. On July 14, 2016, Patient 1 returned to see Respondent with complaints of persistent pain in the low back that radiated to the left buttock and lower extremity. Respondent did not document any explanation of the eight and half month gap in treatment. Respondent noted that the patient had difficulty performing activities of daily living due to the pain and that he used a walker for assistance. Respondent also noted that the patient has stage 4 melanoma with metastasis. Respondent prescribed Norco and Soma, recommended acupuncture therapy and instructed the patient to follow-up in 4 weeks. Respondent did not document patient education or instructions for opioid therapy nor did he document consent for treatment.

20. On August 11, 2016, Patient 1 was seen by Respondent in follow-up for his lower back and right shoulder pain. Respondent noted that the patient was taking Norco and Soma. Respondent documented that the patient continued to have low back pain radiating to his lower extremities. In addition, the patient had pain and tenderness in the right shoulder joint. Respondent's assessment was lumbar spine disc disease with radiculopathy, right shoulder joint arthropathy, lumbar spine paraspinal myospasms, and myalgia. Respondent prescribed 240 tablets of Norco and 90 tablets of Soma, an MRI of the right shoulder, and acupuncture twice a

week. Respondent did not document any reason for doubling Patient 1's Norco prescription from 120 tablets per month to 240 tablets per month.

21. Respondent continued to see Patient 1 on a monthly basis and prescribed Norco and Soma for lower back pain and shoulder pain until June 29, 2017. Respondent's physical examinations were limited to the areas of pain. On June 29, 2017, Respondent also prescribed Tramadol for pain. Respondent did not document an explanation for adding Tramadol to the patient's pain medicine regimen. At no time did Respondent document patient education or instructions for opioid therapy or consent for treatment. Respondent's physical examinations were limited to the areas of pain. On occasion, Respondent documented that urine drug tests were performed. No results for the urine drug tests were ever documented. Respondent did not ever document checking Patient 1's CURES report.

22. When prescribing controlled substances for long-term use for pain conditions, the standard of care requires that the physician obtain the patient's informed consent for treatment. The physician should discuss the risks and benefits of the treatment plan with the patient. Use of a pain management agreement is recommended. Patients should be counseled on opioid overdose and educated regarding overdose prevention and the danger signs of respiratory distress. A prescription for naloxone should be offered if: the patient is receiving a 90 or more morphine milligram equivalence per day; the opioid medication is being prescribed concurrently with a prescription for benzodiazepines; or if the patient presents with an increased risk of overdose, including a patient with a history of overdose, a patient with a history of substance abuse disorder, or a patient at risk for returning to high doses of opioid medications to which the patient is no longer tolerant.

23. Respondent failed to discuss the risks, benefits, or alternatives to opioids with Patient 1 and failed to obtain the patient's consent for treatment with opioids. Patient 1's medical records do not have a signed opioid agreement or any documentation of consent being obtained for treatment with opioids. In addition, Patient 1 had an increased risk of overdose and should have been prescribed naloxone. This is a simple departure from the standard of care.

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24. When prescribing opioids for pain management, the standard of care requires that the physician monitor the patient's compliance with medication usage by reviewing the patient's CURES report at least every four months and consider urine drug testing. Respondent failed to appropriately monitor Patient 1's compliance with medication usage. Respondent failed to review Patient 1's CURES report. Respondent failed to document any urine drug testing results in Patient 1's medical records. This is a simple departure from the standard of care.

25. When treating a patient with opioids for chronic, non-cancer pain, the standard of care requires that the physician document the patient's medical history; physical examination findings; laboratory testing; consent; pain management agreements; results of risk assessment, description of treatment provided, instructions to the patient, including discussion of risks and benefits with the patient or any significant others; results of ongoing monitoring of a patient's progress (or lack of progress) in terms of pain management and functional improvement; notes on evaluations by, and consultation with, a specialist; and, any other information used to support the initiation, continuation, revision, or termination of treatment as well as the steps taken in the response to any aberrant medication use behaviors. The medical records should also include all prescription orders for opioid analgesics and other controlled substances. In addition, written instructions for proper use of all medications should be given to the patient and documented in the record. The name, telephone number, and address of the patient's pharmacy should also be recorded. Records should be up-to-date and maintained in an accessible manner so that they can be readily available for review.

26. Respondent failed to adequately document Patient 1's medical visits. Respondent's physical exam findings were limited and focused only on the areas of pain. Documentation of vital signs were incomplete. Respondent failed to document patient education or instructions for taking pain medication, consent for opioid therapy and urine drug screen results. This is a simple departure from the standard of care.

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PATIENT 2:

27. From May 1, 2019 to April 14, 2021, Respondent provided care and treatment to Patient 2, a 59-year-old male, who suffered a work-related injury to his low back on January 31, 1998. Patient 2's work-related injury was covered by the CDWC. During the 2-year period that Respondent treated Patient 2, Respondent documented that he saw the patient on a monthly basis and submitted progress reports to the Division of Workers' Compensation.

28. At the time of Patient 2's first visit with Respondent on May 1, 2019, Respondent noted that Patient 2 transferred his care and designated Respondent as his Primary Treating Physician for his work-related injury. Patient 2 stated that he had been taking Norco and Zanaflex for his pain but ran out of medication. Respondent noted that the patient had been taking, hydrocodone at 50 MED for "several months and even years now." The medication doses were not documented. Respondent noted that CURES was obtained and did not show any abnormal activities. No CURES reports were maintained in Patient 2's medical records. Respondent noted that the patient was to sign a medication agreement "today." Patient 2's medical records do not contain any medication agreements. Respondent noted that the patient had chronic persistent severe pain on his lower back and lower extremities, and was known to have facet joint pain with previous radiofrequency ablation of the medial branches. Respondent obtained a clinical history and subjective complaints but did not perform a physical examination or take the patient's vital signs. Respondent prescribed 150 tablets of hydrocodone (10/325 mg) with instructions to take 1 tablet every four hours as needed for pain. He also prescribed 60 tablets of Zanaflex (4 mg), with instruction to take 1 tablet twice a day. The patient was instructed to follow-up in 4 weeks.

29. Respondent next saw Patient 2 on May 29, 2019. The patient complained of pain in the lower back and legs. Respondent noted that CURES was obtained and did not show any abnormal activities. No CURES reports were maintained in Patient 2's medical records. Respondent again noted that the patient was to sign a medication agreement "today." Patient 2's medical records do not contain any medication agreements. Respondent noted that the patient had chronic persistent severe pain on his lower back and lower extremities. Respondent obtained

a clinical history and subjective complaints but did not perform a physical examination or take the patient's vital signs. Respondent prescribed 150 tablets of hydrocodone (10/325 mg) with instructions to take 1 tablet every four hours as needed for pain. He also prescribed 60 tablets of Zanaflex (4 mg), with instruction to take 1 tablet twice a day. The patient was instructed to follow-up in 4 weeks.

30. Patient 2 was next seen by Respondent on June 26, 2019. The patient stated that his low back pain was really bad and that the medication helped. Respondent noted that he would refill the patient's medications and that the patient's CURES report did not show any abnormal activities. No CURES reports were maintained in Patient 2's medical records. Respondent again noted that the patient was to sign a medication agreement "today." Patient 2's medical records do not contain any medication agreements. Respondent prescribed 150 tablets of hydrocodone (10/325 mg) with instructions to take 1 tablet every four hours as needed for pain. He also prescribed 60 tablets of Zanaflex (4 mg), with instruction to take 1 tablet twice a day. The patient was instructed to follow-up in 4 weeks.

31. Respondent continued to see Patient 2 on a monthly basis, prescribing 150 tablets of hydrocodone (10/325 mg) and 60 tablets of Zanaflex (4 mg).

32. On December 11, 2019, Patient 2 complained that he was still having some daily pain and that he had started acupuncture. Respondent added a lidocaine patch 5% to be applied to the area of pain and 90 capsules of gabapentin (300 mg) to Patient 2's medication regimen.

33. Respondent continued to see Patient 2 on a monthly basis, prescribing 150 tablets of hydrocodone (10/325 mg) and 60 tablets of Zanaflex (4 mg) until January 15, 2020, at which time, Respondent switched Patient 2's muscle relaxant from Zanaflex to Methcarbamol. Respondent continued to prescribe 150 tablets of hydrocodone (10/325 mg) on a monthly basis with the last prescription of 150 tablets of hydrocodone (10/325 mg) on April 14, 2021.

34. At every visit, Respondent sets forth in the objective findings section of his note that "[hydrocodone] does not cause any adverse reactions," that the patient's CURES report did not show any abnormal activities, and that the patient was to sign a medication agreement "today." Patient 2's medical records do not contain any medication agreements. Respondent carried over

the same description under the objective findings section from visit to visit. Other than documenting Patient 2's temperature on occasion, Respondent did not document Patient 2's vital signs. Respondent rarely set forth findings of a physical examination but rather described the patient's subjective complaints of pain.

35. When prescribing controlled substances for pain conditions, the standard of care requires that the physician obtain a medical history and perform a physical examination. The medical record should document the presence of one or more recognized medical indications for prescribing an opioid analgesic and should reflect an appropriately detailed patient evaluation. Such an evaluation should be completed before a decision is made as to whether or not to prescribe an opioid analgesic. For every patient, the initial work-up should include a systems review and relevant physical examination, as well as laboratory studies as indicated. Assessment of the patient's personal and family history of alcohol or drug abuse and relative risk for medication misuse or abuse should also be part of the initial evaluation and should be completed prior to a decision as to whether or not to prescribe opioids analgesics. This can be done through a careful clinical interview, which also should inquire into any history of physical, emotional or sexual abuse. All patients should be screened for depression and other mental health disorders as part of risk evaluation.

36. At the time of Patient 2's first visit with Respondent on May 1, 2019, Respondent failed to take the patient's vital signs and perform a physical examination. This is a simple departure from the standard of care.

37. When prescribing controlled substances for long-term use for pain conditions, the standard of care requires that the physician obtain the patient's informed consent for treatment. The physician should discuss the risks and benefits of the treatment plan with the patient.

38. Respondent failed to document educating Patient 2 of the risks and benefits of the pain medications being prescribed and he failed obtain a medication agreement. At every visit, Respondent documented that hydrocodone does not cause any adverse reactions, which is medically inaccurate and is a contradiction to known risks of opioids. Further, Respondent

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documented at every visit that the "patient will sign a medication agreement today." This is a simple departure from the standard of care.

39. Respondent failed to adequately document Patient 2's medical visits. Multiple chart entries are copied forward and repeated in each clinic note. Respondent documented little to no physical examination findings. Other than the patient's temperature being recorded on occasion, Respondent did not document Patient 2's vital signs. This is a simple departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

40. Respondent is subject to disciplinary action under Code section 2266, in that he failed to maintain adequate and accurate records for Patients 1 and 2. Complainant refers to and, by this reference, incorporates herein, paragraphs 13 through 39, above, as though fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 40750, issued to Pedro Soriano Alupay, Jr., M.D.;

2. Revoking, suspending or denying approval of Pedro Soriano Alupay, Jr., M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Pedro Soriano Alupay, Jr., M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

4. Ordering Respondent Pedro Soriano Alupay, Jr., M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

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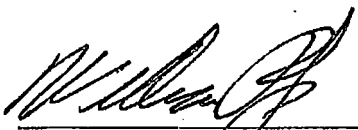
5. Taking such other and further action as deemed necessary and proper.

DATED: MAY 25 2022



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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