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

In the Matter of the Accusation Against, **ANDREW LOZANO, M.D.** **2505 Samaritan Dr. # 606** **San Jose, CA 95124** **Physician's and Surgeon's Certificate No. G 38738,** Respondent.	Case No. 800-2019-060299 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 29, 2022, Complainant William Prasifka, in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, filed Accusation No. 800-2019-060299 against Andrew Lozano, M.D. (Respondent) before the Medical Board of California.

2. On or about January 29, 1979, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 38738 to Respondent. The Physician's and Surgeon's Certificate expired on January 31, 2021, and has not been renewed. A true and correct

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copy of Respondent's Certificate of Licensure is attached as Exhibit A to the accompanying Default Decision Evidence Packet.[1]

3. On or about September 29, 2022, Regina Rodriguez, an employee of the Board, served by Certified Mail a copy of Accusation No. 800-2019-060299, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 2505 Samaritan Drive # 606, San Jose, CA 95124. A copy of the Accusation, the related documents, and Declaration of Service are attached as Exhibit B.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about October 18, 2022, the aforementioned documents were returned by the U.S. Postal Service marked "Not deliverable as addressed. Unable to forward." A copy of the returned envelope is attached as Exhibit C.

6. On or about October 5, 2022, Deputy Attorney General, Karolyn M. Westfall (DAG Westfall), emailed Respondent a copy of the Accusation, the related documents, and Declaration of Service at his last known email address, which was and is: Andrewdocal@gmail.com. (Exhibit D, Declaration of Deputy Attorney General, Karolyn M. Westfall, ¶ 6.)

7. On or about October 14, 2022, having not yet received a Notice of Defense from Respondent, M. Kretsch, an employee of Attorney General's office, served a Courtesy Notice of Default along with a copy of the Accusation, related documents, and Declaration of Service by Certified and First Class Mail to Respondent's address of record with the Board. A copy of the Courtesy Notice of Default and Declaration of Service are attached as Exhibit E.

8. On or about October 14, 2022, M. Kretsch served a Courtesy Notice of Default along with a copy of the Accusation, related documents, and Declaration of Service by email to Respondent's last known email address, and by First Class Mail to Respondent's last two known

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[1] All exhibits are true and correct copies of the originals, and are attached to the accompanying Default Decision Evidence Packet. The Default Decision Evidence Packet is hereby incorporated by reference, in its entirety, as if fully set forth herein.

addresses which are: 4949 Portmarnoch Ct., San Jose, CA 95138; and 5387 Silver Trail Ct., San Jose, CA 95138. (Exhibit E.)

9. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10. To date, Respondent has not filed a Notice of Defense. (Exhibit D ¶ 9.)

11. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-2019-060299.

12. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

13. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it as contained in the separate accompanying Default Decision Evidence Packet, Exhibits A through F, finds that the allegations in Accusation No. 800-2019-060299, and each of them, separately and severally, are true and correct.

14. Section 118 of the Code states, in pertinent part:

> ...
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> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.
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> ...

15. Section 494.5 of the Code states, in pertinent part:

(a)(1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's name is included on a certified list.

...

(b) For purposes of this section:

(1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.

(2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code. "License" excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.

(3) "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. "State governmental licensing entity" shall not include the Contractors State License Board.

(c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.

...

(e)(1) Each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.

(2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant's or licensee's last known mailing address on file with the state

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governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.

...

(f)(1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.

...

(g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

...

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.

...

(h) If the applicant or licensee wishes to challenge the submission of their name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.

(2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise

Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.

(3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. "Financial hardship" means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.

(i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that they diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.

(j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment payment agreement. Upon receipt of this

notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with this subdivision.

...

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

...

(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

...

16. Section 2021 of the Code states, in pertinent part:

...

(b) Each licensee shall report to the board each and every change of address, including an email address, within 30 days after each change, giving both the old and new address. If an address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address. If another address is the licensee's address of record, the licensee may request that the second address not be disclosed to the public.

...

17. Section 2052 of the Code states, in pertinent part:

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten

thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

...

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

18. Section 2220 of the Code states, in pertinent part:

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...

...

19. Section 2225 of the Code states, in pertinent part:

...

(e) If documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the California Board of Podiatric Medicine, the documents shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

...

20. Section 2225.5 of the Code states, in pertinent part:

(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

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21. Section 2227 of the Code states, in pertinent part:

(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.

...

22. Section 2234 of the Code, states, in pertinent part:

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

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

...

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

...

(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.

23. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

24. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

25. Section 2306 of the Code states:

If a licensee's right to practice medicine is suspended, he or she shall not engage in the practice of medicine during the term of such suspension. Upon the expiration of the term of suspension, the certificate shall be reinstated by Medical Board, unless the licensee during the term of suspension is found to have engaged in the practice of medicine in this state. In that event, the division shall revoke the licensee's certificate to engage in the practice of medicine.

26. Section 2456.3 of the Code states:

Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board and payment of all accrued renewal fees and any other fees required by Section 2455. Except as provided in Section 2456.2, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2456.1 which next occurs after the effective date of the renewal.

27. Health and Safety Code section 11352 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport ... any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician ... licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

...

28. 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.

29. Respondent has subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2220, 2227, and 2234, as defined by sections 2052, 2234 subdivision (a), and 2306, of the Code, in that he practiced medicine while his license was suspended, as more particularly alleged hereinafter:

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(a) On or about April 30, 2019, The Department of Consumer Affairs (DCA) mailed a "90 Day Notice of Intent to Suspend" letter to Respondent at his address of record with the Board. This letter informed Respondent that pursuant to section 494.5 of the Code, effective July 3, 2019, his physician's and surgeon's license would be suspended unless a release was received from the Franchise Tax Board (FTB). This letter further informed Respondent that his license suspension would continue until the expiration of the remaining license term, unless, prior to the license expiration, a release was received from the FTB. (Exhibit F, Declaration of Investigator Jacob Seals, ¶ 2.)

(b) On or about July 3, 2019, the Board mailed a "Suspension Notice" letter to Respondent via certified mail to his address of record with the Board. This letter informed Respondent that effective July 3, 2019, his physician's and surgeon's license was suspended pursuant to section 494.5 of the Code. This letter further informed Respondent that the suspension would remain in effect until a release was received from the FTB, and that it is a criminal offense for him to engage in activities which require a physician's and surgeon's license while his license is suspended. (Exhibit F ¶ 3.)

(c) Between on or about July 3, 2019, and on or about January 31, 2021, the Board did not receive a release from the FTB. (Exhibit F ¶ 4.)

(d) On or about January 31, 2021, Respondent's physician's and surgeon's certificate expired. (Exhibit 1.)

(e) On or about July 8, 2019, Respondent prescribed Norco,[2] Adderall,[3] and

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[2] Norco (brand name for hydrocodone and acetaminophen) is an opioid combination medication used for the treatment of pain. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

[3] Adderall (brand name for dextroamphetamine and amphetamine) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine salts medication used for attention deficit hyperactivity disorder and narcolepsy.

Xanax[4] to Patient 1,[5] a male patient with a date of birth of July 25, 1982. (Exhibit F ¶ 6.)

(f) On or about August 5, 2019, Respondent prescribed Norco, Adderall, Xanax, and tadalafil[6] to Patient 1. (Exhibit F ¶ 6.)

(g) On or about August 19, 2019, Respondent prescribed Norco to Patient 1. (Exhibit F ¶ 6.)

(h) On or about July 10, 2019, Respondent prescribed Xanax to Patient 2, a female patient with a date of birth of June 5, 1977. (Exhibit F ¶ 7.)

(i) On or about July 10, 2019, Respondent prescribed Lunesta[7] and Xanax to Patient 3, a female patient with a date of birth of January 17, 1988. (Exhibit F ¶ 8.)

(j) On or about July 11, 2019, Respondent prescribed Xanax, Motrin[8] 800 mg, and Levaquin[9] to Patient 4, a female patient with a date of birth of January 5, 1961. (Exhibit F ¶ 10.)

(k) On or about July 16, 2019, Respondent prescribed Adderall to Patient 5, a male patient with a date of birth of May 29, 1981. (Exhibit F ¶ 11.)

(l) On or about August 13, 2019, Respondent prescribed Adderall to Patient 5. (Exhibit F ¶ 12.)

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[4] Xanax (brand name for alprazolam) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to section 4022 of the Code. It is a benzodiazepine medication used to treat anxiety.

[5] To protect the privacy of the patients involved, the patients' names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

[6] Tadalafil (brand name Cialis) is a vasodilator medication used to treat erectile dysfunction and enlarged prostate. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[7] Lunesta (brand name for eszopiclose) is a sedative medication used to treat insomnia, and a dangerous drug pursuant to Business and Professions Code section 4022.

[8] Motrin (brand name for ibuprofen) is a nonsteroidal anti-inflammatory drug used to treat fever and mild to severe pain. Motrin 800 mg is a dangerous drug pursuant to Business and Professions Code section 4022.

[9] Levaquin (brand name for levofloxacin) is an antibiotic medication used to treat infections, and a dangerous drug pursuant to Business and Professions Code section 4022.

(m) On or about July 16, 2019, Respondent prescribed Ambien[10] to Patient 6, a male patient with a date of birth of January 11, 1955. (Exhibit F ¶ 13.)

(n) On or about August 1, 2019, Respondent prescribed Xanax to Patient 7, a male patient with a date of birth of May 7, 2000. (Exhibit F ¶ 14.)

(o) On or about August 1, 2019, Respondent prescribed Xanax and Z-Pak[11] to Patient 8, a female patient with a date of birth of October 16, 1963. (Exhibit F ¶ 15.)

(p) On or about August 6, 2019, Respondent prescribed fentanyl[12] and Xanax to Patient 9, a female patient with a date of birth of May 13, 1961. (Exhibit F ¶ 16.)

(q) On or about August 9, 2019, Respondent prescribed Soma,[13] Norco, Xanax, and tramadol[14] to Patient 10, a male patient with a date of birth of June 23, 1980. (Exhibit F ¶ 17.)

(r) On or about July 8, 2019, Respondent prescribed promethazine with codeine[15] to Patient 11, a male patient with a date of birth of August 5, 1952. (Exhibit F ¶ 18.)

(s) On or about July 9, 2019, Respondent prescribed diazepam[16] to Patient 12, a female patient with a date of birth of December 6, 1957. (Exhibit F ¶ 19.)

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[10] Ambien (brand name for zolpidem) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a sedative used for the treatment of insomnia.

[11] Z-Pak (brand name for azithromycin) is an antibiotic medication used to treat infections, and a dangerous drug pursuant to Business and Professions Code section 4022.

[12] Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic medication used to treat severe pain.

[13] Soma (brand name for carisoprodol) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug pursuant to Business and Professions Code section 4022. It is a muscle relaxant medication used to treat pain.

[14] Tramadol (brand name Ultram) is an opioid analgesic medication. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug pursuant to Business and Professions Code section 4022.

[15] Promethazine with codeine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(l), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an antihistamine, narcotic, and cold medication.

[16] Diazepam (brand name Valium) is a Schedule IV controlled substance pursuant to

(t) On or about August 13, 2019, Respondent prescribed diazepam to Patient 12. (Exhibit F ¶ 19.)

(u) On or about August 13, 2019, Respondent prescribed Tylenol with codeine # 4[17] to Patient 13, a male patient with a date of birth of March 10, 1959. (Exhibit F ¶ 20.)

(v) On or about July 9, 2019, Respondent prescribed diazepam to Patient 14, a male patient with a date of birth of May 13, 1992. (Exhibit F ¶ 21.)

(w) On or about August 13, 2019, Respondent prescribed diazepam to Patient 14. (Exhibit F ¶ 22.)

(x) On or about September 10, 2019, Respondent prescribed diazepam to Patient 14. (Exhibit F ¶ 22.)

(y) On or about August 6, 2019, Respondent prescribed Soma, Adderall, and Percocet[18] to Patient 15, a male patient with a date of birth of November 25, 1971. (Exhibit F ¶ 23.)

(z) On or about August 12, 2019, Respondent prescribed alprazolam to Patient 16, a female patient with a date of birth of November 2, 1956. (Exhibit F ¶ 24.)

(aa) On or about August 1, 2019, Respondent prescribed Xanax to Patient 17, a female patient with a date of birth of March 28, 1975. (Exhibit F ¶ 25.)

(bb) On or about August 1, 2019, Respondent prescribed Norco to Patient 18, a male patient with a date of birth of December 7, 1954. (Exhibit F ¶ 26.)

(cc) On or about July 29, 2019, Respondent prescribed Norco and Soma to Patient 19, a female patient with a date of birth of November 14, 1978. (Exhibit F ¶ 27.)

Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a benzodiazepine medication used to treat anxiety.

[17] Tylenol with codeine #4 is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a narcotic medication used to treat mild to moderate severe pain.

[18] Percocet (brand name for oxycodone and acetaminophen) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an opioid medication used to treat pain.

30. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption, as more particularly alleged in paragraphs 29 (a) through (cc), above, which are hereby incorporated by reference and realleged as if fully set forth herein.

31. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, and Health and Safety Code section 11352, in that he has violated a state law or laws regulating dangerous drugs and/or controlled substances, as more particularly alleged in paragraphs 29 (a) through (cc) above, which are hereby incorporated by reference and realleged as if fully set forth herein.

32. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2227 and 2234, as defined by section 2225, subdivision (e) and section 2225.5, subdivision (a)(1), of the Code, in that Respondent failed and/or refused to produce medical records, as more particularly alleged hereinafter:

(a) On or about May 10, 2021, a Board investigator went to Respondent's medical office at his address of record with the Board. The investigator noted the office was closed and appeared vacant and not in operation. (Exhibit F ¶ 28.)

(b) On or about February 7, 2022, a Board investigator went to Respondent's home address on file with the Board. When no one answered the door, the investigator left a business card requesting Respondent contact the investigator. The investigator spoke with several neighbors and confirmed they had seen Respondent at the residence. (Exhibit F ¶ 29.)

(c) On or about March 21, 2022, a Board investigator mailed a letter to Respondent's home address on file with the Board requesting certified complete records from January 1, 2017, to the present, for Patient 2, Patient 4, Patient 7, Patient 8, Patient 12, Patient 13, Patient 14, Patient 15, Patient 16, Patient 18, and Patient 19. The letter informed

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Respondent that the records for each patient were due by April 11, 2022. A signed release for each patient was included with the letter. (Exhibit F ¶ 30.)

(d) On or about April 11, 2022, and thereafter, Respondent failed to produce the requested certified records of Patient 2, Patient 4, Patient 7, Patient 8, Patient 12, Patient 13, Patient 14, Patient 15, Patient 16, Patient 18, and Patient 19. (Exhibit F ¶ 31.)

(e) Between on or about February 7, 2022, and on or about July 7, 2022, Respondent failed to make any contact with the Board investigator. (Exhibit F ¶ 32.)

33. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (g), of the Code, in that without good cause, Respondent failed to attend and participate in an interview by the Board, as more particularly alleged hereinafter:

(a) On or about April 25, 2022, a Board investigator mailed Respondent an investigational subpoena to Respondent's home address on file with the Board, commanding him to appear for a subject interview on May 6, 2022, at 10:00 a.m. (Exhibit F ¶ 33.)

(b) On or about May 6, 2022, Respondent did not appear for his scheduled subject interview. (Exhibit F ¶ 34.)

34. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 38738 to disciplinary action under sections 2227 and 2234 of the Code, in that he engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 29 through 33(b), above, which are hereby incorporated by reference as if fully set forth herein.

35. The costs of investigation and enforcement of the case prayed for in the Accusation total 6,723.75. (Exhibit D ¶ 15.)

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Andrew Lozano, M.D., has subjected his Physician's and Surgeon's Certificate No. G 38738 to discipline.

2. A copy of the Accusation, related documents, and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Medical Board of California is authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the following violations alleged in the Accusation:

a. Respondent practiced medicine while his license was suspended;

b. Respondent committed an act or acts of dishonesty or corruption;

c. Respondent violated a state law or laws regulating dangerous drugs and/or controlled substances;

d. Respondent failed and/or refused to produce medical records;

e. Respondent failed to attend and participate in an interview by the Board; and

f. Respondent engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.

5. Respondent is liable to the Board the cost of investigation and enforcement in the amount of six thousand seven hundred twenty-three dollars and seventy-five cents (6,723.75).

ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 38738, heretofore issued to Respondent ANDREW LOZANO, M.D., is revoked.

If Respondent ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with all the laws, regulations, and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

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Respondent is ordered to reimburse the Board the amount of 6,723.75 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's Physician's and Surgeon's License may not be renewed or reinstated unless all costs ordered under Business and Professions Code section 125.3 have been paid.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on JAN 17 2023.

It is so ORDERED DEC 16 2022

William Prasifka, Executive Director
FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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