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

In the Matter of the Accusation Against:	)	
Carlos Francisco Bayardo, M.D.	)	Case No. 800-2016-027139
Physician's and Surgeon's Certificate No. A 91684	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on MAR 27 2020

IT IS SO ORDERED FEB 27 2020

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD
Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
LYNETTE D. HECKER
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California Department of Justice
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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:	Case No. 800-2016-027139
CARLOS FRANCISCO BAYARDO, M.D. **41696 Road 128** **Orosi, CA 93647**	OAH No. 2019041230
Physician's and Surgeon's Certificate No. A 91684	**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**
Respondent.	

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Lynette D. Hecker, Deputy Attorney General.

2. Respondent Carlos Francisco Bayardo, M.D. (Respondent) is represented in this proceeding by attorney Richard Salinas, whose address is: 8405 N. Fresno Street, Suite 150 Fresno, CA 93720.

3. On or about June 15, 2005, the Board issued Physician's and Surgeon's Certificate No. A 91684 to Carlos Francisco Bayardo, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-027139, and will expire on February 28, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-027139 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 April 3, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-027139 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. 800-2016-027139. Respondent has also carefully read, fully discussed with 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 does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation

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No. 800-2016-027139 and that he has thereby subjected his Physician's and Surgeon's Certificate to disciplinary action.

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

CONTINGENCY

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

12. 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.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent, Carlos Francisco Bayardo, M.D., Physician's and Surgeon's Certificate No. A 91684, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's care and treatment of three patients, as set

forth in Accusation No. 800-2016-027139, and is as follows:

Respondent, Carlos Francisco Bayardo, M.D., failed to maintain adequate and accurate medical records in light of prescribing controlled substances to three patients, failed to document exams when symptoms presented in two of the patients, failed to document consideration of additional evaluation for one of the patients, and failed to document a treatment plan and objectives or indicate if any further diagnostic evaluations or treatments were planned for any of the three patients, which prevents full periodic review and consideration of consultation. These failures have been determined to constitute deficient recordkeeping within the meaning of Business and Professions Code section 2266.

B. MEDICAL RECORDKEEPING COURSE

Within 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 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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C. **ENFORCEMENT**

Failure to timely complete the Medical Recordkeeping Course outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Richard Salinas. 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: 02/05/2020

CARLOS FRANCISCO BAYARDO, M.D.
Respondent

I have read and fully discussed with Respondent Carlos Francisco Bayardo, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/5/20

RICHARD SALINAS
Attorney for Respondent

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ENDORSEMENT

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

DATED: 2/5/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

LYNETTE D. HECKER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-027139

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 3 20 19
BY D. Richard ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2016-027139
CARLOS FRANCISCO BAYARDO, M.D. 41696 Road 128 Orosi, CA 93647 **Physician's and Surgeon's Certificate No. A 91684,** Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about June 15, 2005, the Medical Board issued Physician's and Surgeon's Certificate Number A 91684 to Carlos Francisco Bayardo, 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 February 28, 2021, 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 unless otherwise indicated.

4. 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."

5. 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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated 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."

6. 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."

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FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent Carlos Francisco Bayardo, M.D. is subject to disciplinary action under section 2234, subdivision (c), in that he committed repeated acts of negligence. The circumstances are as follows:

8. The standard of care for the prescribing of controlled substances requires that a medical history be obtained. Such a history includes an assessment of the patient's pain, physical and psychological function, substance abuse history, history of prior pain treatment, assessment of underlying or coexisting conditions, and documentation of medical indications for the use of controlled substances.

9. The standard of care for the prescribing of controlled substances requires a physical examination which includes an initial examination focused on the patient's presenting illness, as well as subsequent follow-up examinations to determine the course of the illness and the effect of treatment, both intended and adverse effects.

10. The standard of care for the prescribing of controlled substances requires that the prescribing physician document objectives by which the treatment can be evaluated, such as pain relief and/or function, and indicate if any further diagnostic evaluations or other treatments are planned. The treatment plan should be tailored to the individual needs of the patient, which may include multiple treatment modalities.

11. The standard of care for the prescribing of controlled substances requires that the prescribing physician consider referring the patient for additional evaluation and treatment to achieve treatment objectives, such as referral to specialists in addiction medicine, pain management, and/or psychiatry, as necessary.

12. The standard of care for the prescribing of controlled substances requires the maintenance of accurate and complete records, demonstrating a history and physical examination along with evaluations and consultations, treatment plans and objectives, informed consent, medications prescribed and documentation of periodic review.

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Circumstances related to Patient A[1].

13. On or about June 18, 2015, Patient A, a 56 year old woman, presented at Respondent's clinic to establish primary care. She was seen by another provider, who prescribed alprazolam[2] 0.25mg, 90 tabs, and oxycodone-acetaminophen[3] 10-325mg, 120 tabs, among other medications. She was seen for the first time by Respondent on or about June 30, 2015. Respondent discontinued the oxycodone-acetaminophen prescription, and instead prescribed oxycodone 15mg, 120 tabs. Respondent continued to see the patient on an approximately monthly basis, continuing her on oxycodone and alprazolam, until her last visit, on or about March 1, 2016.

14. Other than stating a diagnosis of arthritis and back pain, Respondent failed to give any assessment of the patient's pain or physical or psychological function. Respondent failed to document any inquiry into the patient's substance abuse history, if any. Respondent failed to document any history of the patient's pain treatment.

15. Respondent failed to perform an adequate initial musculoskeletal examination of the patient, sufficient to support a diagnosis of chronic back pain and arthritis requiring long-term oxycodone therapy. Respondent had access to records from other providers that had seen the patient earlier, but none of those records documented an adequate musculoskeletal examination, either. On subsequent visits, Respondent variously noted "normal range of motion," "normal strength," "back pain lumbar area," and "severe back pain." None of these notes are adequate to support long-term oxycodone therapy.

16. Respondent failed to document any objectives by which the patient's oxycodone treatment could be evaluated. Respondent failed to document any characterization of the patient's pain relief or function with respect to her back pain or arthritis.

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[1] Patients are referred to by letter to protect their privacy.

[2] Alprazolam (Xanax) is a benzodiazepine medication used to treat anxiety. Alprazolam is a Schedule IV controlled substance.

[3] Oxycodone-acetaminophen (Percocet) is a preparation of the opiate oxycodone, and the analgesic acetaminophen, used to treat chronic pain. Oxycodone is a Schedule II controlled substance.

17. Respondent failed to document whether any further diagnostic evaluation or treatments were planned, and apparently made no referrals for consultation regarding the patient's pain. The patient was receiving a relatively high dose of opiates, with a concurrent prescription for benzodiazepines, which would support a referral to a pain management specialist.

18. Respondent failed to fully document a history, physical examination, and treatment plan and objectives. Respondent utilized electronic medical records. In an interview, Respondent stated that he was still learning to use the electronic medical record system, and thus his history, physical examination, and treatment plan were not adequately documented.

19. Respondent's failures as described in paragraphs 14 through 18, above, individually and collectively, constitute acts of negligence.

Circumstances Related to Patient B

20. On or about April 15, 2014, Patient B, a 59 year old woman, presented at Respondent's clinic with a history of fibromyalgia and migraines. She was seen by Respondent, who diagnosed the patient with fibromyalgia and back pain, and prescribed Soma[4], Fioricet[5], and Norco[6]. Respondent continued to see the patient on a roughly monthly basis until her final visit on or about October 6, 2016. Valium[7] was prescribed to the patient by another provider after her initial visit with Respondent, and Respondent continued the Valium prescription from on or about August 19, 2014, until her final visit. Respondent maintained the patient on Soma, Fioricet, Norco, and Valium at essentially the same dosage until her final visit.

21. Respondent noted "back pain lumbar area" on two visits, but never conducted a full physical examination of the patient's back.

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[4] Carisoprodol (Soma) is a muscle relaxant and a Schedule IV controlled substance.

[5] Fioricet is a preparation of acetaminophen, caffeine, and the barbiturate butalbital, used to treat headaches.

[6] Norco is a preparation of the opiate hydrocodone and acetaminophen. On October 6, 2014, hydrocodone was moved from Schedule III to Schedule II.

[7] Diazepam (Valium) is a benzodiazepine sedative used to treat anxiety, muscle spasm, and seizures. It is a Schedule IV controlled substance.

22. Respondent failed to document a plan or state objectives by which the patient's treatment with controlled substances could be evaluated.

23. Respondent failed to fully document a history, physical examination, and treatment plan and objectives. Respondent admitted in an interview that his history, physical examination, and treatment plan were not adequately documented, as a result of his unfamiliarity with the electronic medical recordkeeping program.

24. Respondent's failures as described in paragraphs 21 through 23, above, individually and collectively, constitute acts of negligence.

Circumstances Related to Patient C

25. On or about December 23, 2013, Patient C, a 66 year old woman, presented at Respondent's clinic with a history of asthma, hypertension, diabetes, hypothyroidism, migraines, chronic back pain, and osteoarthritis. The patient was currently taking Norco at 15mg per day. Respondent continued her on the same dosage of Norco, and saw the patient on a roughly monthly basis until on or about October 17, 2016.

26. Respondent failed to adequately document an assessment of the patient's pain and function.

27. Respondent repeatedly noted "back pain," but documented a physical examination showing "normal range of motion, normal strength" without any further musculoskeletal examination. On or about June 18, 2015, Respondent noted "claudication and lumbar pain," and "knee pain bilateral," but failed to document any further musculoskeletal characterization or examination.

28. Respondent failed to document a treatment plan or any objectives by which the patient's treatment could be evaluated. Respondent failed to document whether any further diagnostic evaluations or other treatments were planned.

29. Respondent's failures as described in paragraphs 26 through 28, above, individually and collectively, constitute acts of negligence.

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SECOND CAUSE FOR DISCIPLINE

(Recordkeeping)

30. Respondent Carlos Francisco Bayardo, M.D. is subject to disciplinary action under section 2266 in that he failed to maintain adequate and accurate medical records. The circumstances are set forth in paragraphs 8 through 29, above, which are incorporated here by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 91684, issued to Carlos Francisco Bayardo, M.D.;

2. Revoking, suspending or denying approval of Carlos Francisco Bayardo, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Carlos Francisco Bayardo, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED:
April 3, 2019

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

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