

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6457
Facsimile: (916) 731-2117
7 E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation/Petition to
Revoke Probation Against,

14 **TOMAS BALLESTEROS RIOS, M.D.**
15 **300 Wai Nani Way, PH 12**
Honolulu, HI 96815
16 **Physician's and Surgeon's Certificate No. A**
54078,

Case No. 800-2019-053786

DEFAULT DECISION
AND ORDER

[Gov. Code, § 11520]

17 One.
18

19
20 **FINDINGS OF FACT**

21 1. On or about October 23, 2019, Complainant Kimberly Kirchmeyer, in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs, filed Accusation/Petition to Revoke Probation No. 800-2019-053786 against Tomas
24 Ballesteros Rios, M.D. (Respondent) before the Medical Board of California.

25 2. On or about March 29, 1995, the Medical Board of California (Board) issued
26 Physician's and Surgeon's Certificate No. A 54078 to Respondent. The Physician's and Surgeon's
27 Certificate expired on December 31, 2018, has not been renewed, and is in a delinquent status.

28 3. On or about July 18, 2019, a Medical Board Associate Governmental Program

Analyst served by Certified Mail a copy of the Accusation/Petition to Revoke Probation No. 800-2019-053786, 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 300 Wai Nani Way, PH 12, Honolulu, HI 96815. A copy of the Accusation/Petition to Revoke Probation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. On or about August 5, 2019, the United States Postal Service returned the copy of the Accusation/Petition to Revoke Probation No. 800-2019-053786, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to the Board after two attempts to serve it to Respondent's address of record with the Board, which was and is 300 Wai Nani Way, PH 12, Honolulu, HI 96815, marked "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." A copy of the Returned Envelope is attached as Exhibit B and is incorporated herein by reference.

5. Service of the Accusation/Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

6. On or about August 23, 2019, the Office of the Attorney General served Respondent with a Courtesy Notice of Default.

7. No Notice of Defense was received by either the Board or the Office of the Attorney General.

8. A copy of the Declaration of Staff Services Manager II Paulette Romero (Romero) attesting to the foregoing facts is attached as Exhibit C, and is incorporated herein by reference.

9. On or about June 23, 2020, Romero reviewed the Board's records regarding Respondent's compliance with his probation and the evidence demonstrating Respondent violated numerous terms and conditions of his Probation Order which led to the filing of the Accusation/Petition to Revoke Probation.

10. A copy of the Declaration of Romero attesting to her review of Respondent's compliance with his probation is attached as Exhibit C, and is incorporated herein by reference.

11. Deputy Attorney General Wendy Widlus (Widlus) is assigned to prepare the Default

Decision & Order in the above matter and has reviewed the file. A copy of the Declaration of Widlus attesting to the fact that no Notice of Defense from Respondent was ever received by the California Department of Justice, Health Quality Enforcement Section is attached as exhibit D, and is incorporated herein by reference.

12. Business and Professions Code section 118 states, in pertinent part:

(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 license on any such ground.

13. 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.

14. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation/Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Accusation/Petition to Revoke Probation No. 800-2019-053786.

15. 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.

16. 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, contained in exhibits A, B, C, and D, which are incorporated here by reference, finds that the allegations in Accusation/Petition to Revoke Probation No. 800-2019-053786 are true.

//

//

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent TOMAS BALLESTEROS RIOS, M.D. has subjected his Physician's and Surgeon's Certificate No. A 54078 to discipline.
2. A copy of the Accusation/Petition to Revoke Probation and the 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/Petition to Revoke Probation:
 - a. First Cause To Revoke Probation: Failure to Maintain Current Address.
 - b. Second Cause To Revoke Probation: Failure to Maintain Current License.
 - c. Third Cause To Revoke Probation: Failure to Practice Medicine in Excess of Two Years.

//

//

//


1 **ORDER**

2 **IT IS SO ORDERED** that Physician's and Surgeon's Certificate No. A 54078, heretofore
3 issued to Respondent TOMAS BALLESTEROS RIOS, M.D., is revoked.

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

8 This Decision shall become effective on **JAN 15 2021**.

9
10 It is so ORDERED **DEC 18 2020**

11
12 
13 FOR THE MEDICAL BOARD OF
14 CALIFORNIA
15 DEPARTMENT OF CONSUMER AFFAIRS

16
17 LA2019500585
18 63560086.docx
19
20
21
22
23
24
25
26
27
28

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
WENDY WIDLUS
3 Deputy Attorney General
State Bar No. 82958
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6457
6 Facsimile: (213) 897-9395
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 18 2019
BY S. Richards ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **TOMAS BALLESTEROS RIOS, M.D.**
300 Wai Nani Way, PH 12
14 Honolulu, HI 96815

15 **Physician's and Surgeon's Certificate No. A**
54078,
16 Respondent.

Case No. 800-2019-053786

ACCUSATION
AND
PETITION TO REVOKE PROBATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke
21 Probation solely in her official capacity as the Executive Director of the Medical Board of
22 California, Department of Consumer Affairs.

23 2. On or about March 29, 1995, the Medical Board of California issued Physician's and
24 Surgeon's Certificate Number A 54078 to Tomas Ballesteros Rios, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate expired on December 31, 2018, and has not been renewed.

26 3. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
27 *Ballesteros Rios, M.D.*, Case Number 19-2012-225650, the Medical Board of California issued a
28 decision, effective December 30, 2016, in which Respondent's physician's and surgeon's

1 certificate was revoked, the revocation was stayed, and his license was placed on probation for
2 seven years with terms and conditions. A copy of that decision is attached as Exhibit "A" and
3 incorporated by reference.

4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the Medical
6 Board of California (Board), Department of Consumer Affairs, under the authority of the
7 following laws. All section references are to the Business and Professions Code unless otherwise
8 indicated.

9 5. At all times after the effective date of Respondent's probation, Condition 14 of the
10 standard conditions stated:

11 "Violation of Probation.

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

18 6. Section 2227 of the Code states:

19 (a) A licensee whose matter has been heard by an administrative law judge of
20 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
21 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:

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

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

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

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

28 (5) Have any other action taken in relation to discipline as part of an order of

1 probation, as the board or an administrative law judge may deem proper.

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

8 7. Section 2234 of the Code, states:

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

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

14 (b) Gross negligence.

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

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

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

27 (d) Incompetence.

28 (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.

//

//

8. Section 118, subdivision (b) of the Code states:

(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.

FIRST CAUSE TO REVOKE PROBATION

(Maintain Current Address)

9. At all times after the effective date of Respondent's probation, Condition 10 stated in relevant part:

“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.”

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 10, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about December 13, 2016, Respondent's probation inspector (Inspector) mailed a certified letter to Respondent requesting him to attend an intake appointment on December 21, 2016, to review the terms and conditions of Respondent's probation.

B. On December 21, 2016, the Inspector and Respondent met and reviewed the terms and conditions of Respondent's probation. The Inspector asked Respondent to hand write a letter stating his intention to leave the United States for the Philippines and Hawaii. The letter he printed and signed included two addresses in Hawaii and the Philippines, as well as his email address.

After review of all of the terms and conditions of his probation Respondent signed the "Acknowledgement of Decision" form.

C. Respondent failed to keep the Board informed of his current business, residence, and

1 email addresses. The Board mailed *Agreement for Surrender While on Probation* documents to
2 Respondent by certified mail on November 19, 2018. The certified mail envelope containing the
3 documents were returned to the Board after two attempts to deliver.

4 D. The *Agreement for Surrender While on Probation* documents were emailed to Dr.
5 Rios on November 20, 2018. Respondent failed to respond to the Board's email.

6 **SECOND CAUSE TO REVOKE PROBATION**

7 (Maintain Current License)

8 11. At all times after the effective date of Respondent's probation, Condition 10 stated in
9 pertinent part:

10 "Respondent shall maintain a current and renewed California physician's and surgeon's
11 license."

12 12. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
14 are as follows:

15 A. Respondent failed to maintain a current and renewed California physician's and
16 surgeon's license. Respondent's California physician's and surgeon's license expired December
17 31, 2018, and Respondent has not renewed his California physician's and surgeon's license.

18 **THIRD CAUSE TO REVOKE PROBATION**

19 (Non-Practice Exceeding Two Years)

20 13. At all times after the effective date of Respondent's probation, Condition 12 stated in
21 relevant part:

22 "Respondent's period of non-practice while on probation shall not exceed two (2) years.
23 Periods of non-practice will not apply to the reduction of the probationary period."

24 14. Respondent's probation is subject to revocation because he failed to comply with
25 Probation Condition 12, referenced above. The facts and circumstances regarding this violation
26 are as follows:

27 A. On June 13, 2018, the Board sent Respondent a letter which stated, inter alia,
28 "In addition, this letter is to notify you of the terms and conditions of your non-practice

1 status while on probation with the Medical Board (Board) of California as follows:

2 "1) Non-Practice While on Probation will exceed 18 calendar months on June 30, 2018.

3 You will be required to successfully complete a Board approved clinical training program prior to
4 resuming to the practice of medicine [sic]

5 "2) Non-Practice While on Probation will exceed two years on December 30, 2018 [sic]

6 "If you are unable to satisfy the terms and conditions of your probation, you may request a
7 voluntary surrender of your license."

8 B. Respondent has failed to practice medicine in excess of two (2) years.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct)

11 (Bus. & Prof. Code, §2234)

12 15. Respondent is subject to disciplinary action under section 2234 in that he engaged in
13 unprofessional conduct. The circumstances are as follows:

14 16. The facts and circumstances alleged in paragraphs 9 through 14 above are
15 incorporated here as if fully set forth.

16 **DISCIPLINE CONSIDERATIONS**

17 17. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
18 *Ballesteros Rios, M.D.*, Case Number 08-2007-185976, the Medical Board of California issued a
19 decision, effective June 15, 2011, in which Respondent's physician's and surgeon's certificate
20 was revoked, the revocation was stayed, and his license was placed on probation for three years
21 for conviction of a substantially related offense for making and subscribing a false income tax
22 return, a felony. That decision is now final and is incorporated by reference as if fully set forth
23 herein.

24 18. In a disciplinary action entitled *In the Matter of the Accusation Against Tomas*
25 *Ballesteros Rios, M.D.*, Case Number 19-2012-225650, the Medical Board of California issued a
26 decision, effective December 30, 2016, in which Respondent's physician's and surgeon's
27 certificate was revoked, the revocation was stayed, and his license was placed on probation for
28 seven years for conviction of a substantially related offense for conspiracy to commit insurance


1 fraud, a felony, failure to report said conviction to the Board, unprofessional conduct, and
2 dishonest and corrupt acts. That decision is now final and is incorporated by reference as if fully
3 set forth herein.

4 **PRAYER**

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

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 54078,
8 issued to Tomas Ballesteros Rios, M.D.;
- 9 2. Revoking, suspending or denying approval of Tomas Ballesteros Rios, M.D.'s
10 authority to supervise physician's assistants, and advanced practice nurses;
- 11 3. Ordering Tomas Ballesteros Rios, M.D. to pay the Medical Board of California the
12 reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the
13 costs of probation monitoring;
- 14 4. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: July 18, 2019

18 
19 KIMBERLY KIRCHMEYER
20 Executive Director
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California
24 Complainant

25
26
27
28
LA2019500585
53557922.docx

Exhibit A

Decision and Order

Medical Board of California Case No. 19-2012-225650.

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

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

Tomas Ballesteros Rios, M.D.

**Physician's and Surgeon's
Certificate No. A 54078**

Respondent

Case No. 19-2012-225650


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 December 30, 2016.

IT IS SO ORDERED: December 2, 2016.

MEDICAL BOARD OF CALIFORNIA



Michelle Anne Bholat, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6793
6 Facsimile: (213) 897-9395
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **TOMAS BALLESTEROS RIOS, M.D.**
12 **9807 Lightner Way**
13 **Bakersfield, CA 93311**

14 **Physician's and Surgeon's Certificate No.**
A54078

15 Respondent.

Case No. 19-2012-225650

OAH No. 2015121015

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Tan N. Tran, Deputy
23 Attorney General.

24 2. Respondent TOMAS BALLESTEROS RIOS, M.D. ("Respondent") is represented in
25 this proceeding by attorney Lewis R. Walton, Esq., whose address is: 4640 Admiralty Way, 5th
26 Floor, Marina Del Rey, CA 90292.

27 ///

3. On or about March 29, 1995, the Medical Board of California issued Physician's and Surgeon's Certificate No. A54078 to TOMAS BALLESTEROS RIOS, 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. 19-2012-225650, and will expire on December 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 19-2012-225650 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 1, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 19-2012-225650 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. 19-2012-225650. 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.

///

///

///

1

2

6

9

10

14

15

2.

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A54078 issued
6 to Respondent TOMAS BALLESTEROS RIOS, M.D. is revoked. However, the revocation is
7 stayed and Respondent is placed on probation for seven (7) years on the following terms and
8 conditions.

9 1. **ACTUAL SUSPENSION.** As part of probation, Respondent is suspended from the
10 practice of medicine for 60 days beginning the sixteenth (16th) day after the effective date of this
11 decision.

12 2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to
14 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
15 Program, University of California, San Diego School of Medicine (Program), approved in
16 advance by the Board or its designee. Respondent shall provide the program with any information
17 and documents that the Program may deem pertinent. Respondent shall participate in and
18 successfully complete the classroom component of the course not later than six (6) months after
19 Respondent's initial enrollment. Respondent shall successfully complete any other component of
20 the course within one (1) year of enrollment. The medical record keeping course shall be at
21 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
22 requirements for renewal of licensure.

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

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than 15 calendar days after successfully completing the course, or not later than
2 15 calendar days after the effective date of the Decision, whichever is later.

3 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
4 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
5 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
6 Respondent shall participate in and successfully complete that program. Respondent shall
7 provide any information and documents that the program may deem pertinent. Respondent shall
8 successfully complete the classroom component of the program not later than six (6) months after
9 Respondent's initial enrollment, and the longitudinal component of the program not later than the
10 time specified by the program, but no later than one (1) year after attending the classroom
11 component. The professionalism program shall be at Respondent's expense and shall be in
12 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

13 A professionalism program taken after the acts that gave rise to the charges in the
14 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
15 or its designee, be accepted towards the fulfillment of this condition if the program would have
16 been approved by the Board or its designee had the program been taken after the effective date of
17 this Decision.

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

21 4. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective
22 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
23 practice and billing monitor(s), the name and qualifications of one or more licensed physicians
24 and surgeons whose licenses are valid and in good standing, and who are preferably American
25 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
26 business or personal relationship with Respondent, or other relationship that could reasonably be
27 expected to compromise the ability of the monitor to render fair and unbiased reports to the
28 Board, including but not limited to any form of bartering, shall be in Respondent's field of

1 practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
2 costs.

3 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
4 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
5 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
6 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
7 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
8 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
9 signed statement for approval by the Board or its designee.

10 Within 60 calendar days of the effective date of this Decision, and continuing throughout
11 probation, Respondent's practice and billing shall be monitored by the approved monitor.
12 Respondent shall make all records available for immediate inspection and copying on the
13 premises by the monitor at all times during business hours and shall retain the records for the
14 entire term of probation.

15 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
16 date of this Decision, Respondent shall receive a notification from the Board or its designee to
17 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
18 shall cease the practice of medicine until a monitor is approved to provide monitoring
19 responsibility.

20 The monitor(s) shall submit a quarterly written report to the Board or its designee which
21 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
22 are within the standards of practice of medicine and billing, and whether Respondent is practicing
23 medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to
24 ensure that the monitor submits the quarterly written reports to the Board or its designee within
25 10 calendar days after the end of the preceding quarter.

26 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
27 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
28 name and qualifications of a replacement monitor who will be assuming that responsibility within

1 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
2 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
3 notification from the Board or its designee to cease the practice of medicine within three (3)
4 calendar days after being so notified Respondent shall cease the practice of medicine until a
5 replacement monitor is approved and assumes monitoring responsibility.

6 In lieu of a monitor, Respondent may participate in a professional enhancement program
7 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
8 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
9 chart review, semi-annual practice assessment, and semi-annual review of professional growth
10 and education. Respondent shall participate in the professional enhancement program at
11 Respondent's expense during the term of probation.

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

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

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

1 appropriate practice setting is established.

2 STANDARD CONDITIONS

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

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

12 7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
13 prohibited from supervising physician assistants.

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

17 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
18 under penalty of perjury on forms provided by the Board, stating whether there has been
19 compliance with all the conditions of probation.

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

22 10. GENERAL PROBATION REQUIREMENTS.

23 Compliance with Probation Unit

24 Respondent shall comply with the Board's probation unit and all terms and conditions of
25 this Decision.

26 Address Changes

27 Respondent shall, at all times, keep the Board informed of Respondent's business and
28 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(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 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 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or

1 Federal jurisdiction while on probation with the medical licensing authority of that state or
2 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
3 not be considered as a period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete a clinical training program that meets the criteria
6 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
7 Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

10 Periods of non-practice will relieve Respondent of the responsibility to comply with the
11 probationary terms and conditions with the exception of this condition and the following terms
12 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

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

24 15. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
3 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
4 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
5 application shall be treated as a petition for reinstatement of a revoked certificate.

6 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
7 with probation monitoring each and every year of probation, as designated by the Board, which
8 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
9 California and delivered to the Board or its designee no later than January 31 of each calendar
10 year.

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Lewis R. Walton, Esq.. 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: 11/16/16


TOMAS BALLESTEROS RIOS, M.D.
Respondent

I have read and fully discussed with Respondent TOMAS BALLESTEROS RIOS, 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: 11/16/16


LEWIS R. WALTON, ESQ.
Attorney for Respondent


ENDORSEMENT

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

Dated: 11/17/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General


TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

LA2015602849
62015671.doc

Exhibit A

Accusation No. 19-2012-225650

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 1 2015
BY D. Richards ANALYST

1 KAMALA D. HARRIS
2 Attorney General of California
3 JUDITH T. ALVARADO
4 Supervising Deputy Attorney General
5 TAN N. TRAN
6 Deputy Attorney General
7 State Bar No. 197775
8 CALIFORNIA DEPARTMENT OF JUSTICE
9 300 So. Spring Street, Suite 1702
10 Los Angeles, CA 90013
11 Telephone: (213) 897-6793
12 Facsimile: (213) 897-9395
13 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 19-2012-225650

12 Tomas Ballesteros Rios, M.D.
13 1436 Crestmont Drive, Unit 6726
14 Bakersfield, CA 93386-7036

ACCUSATION

14 Physician's and Surgeon's Certificate
15 No. A54078,

16 Respondent.

18 Complainant alleges:

19 PARTIES

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

23 2. On or about March 29, 1995, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A54078 to Tomas Ballesteros Rios, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2016, unless renewed.

27 ///

28 ///

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 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 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. 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:

///

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

3 "(b) Gross negligence.

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

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

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

14 "(d) Incompetence.

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

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

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

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board."

25 7. Section 2236 of the Code states:

26 "(a) The conviction of any offense substantially related to the qualifications, functions, or
27 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
28

1 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
2 evidence only of the fact that the conviction occurred.

3 • “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
4 Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or
5 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
6 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
7 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
8 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
9 a license as a physician and surgeon.

10 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
11 after the conviction, transmit a certified copy of the record of conviction to the board. The
12 division may inquire into the circumstances surrounding the commission of a crime in order to fix
13 the degree of discipline or to determine if the conviction is of an offense substantially related to
14 the qualifications, functions, or duties of a physician and surgeon.

15 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
16 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
17 shall be conclusive evidence of the fact that the conviction occurred.”

18 8. Section 802.1 of the Code states:

19 “(a) (1) A physician and surgeon, doctor of podiatric medicine and a physician assistant
20 shall report either of the following to the entity that issued his or her license:

21 “(A) The bringing of an indictment or information charging a felony
22 against the licensee.

23 “(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no
24 contest, of any felony or misdemeanor.

25 ¹ California Business and Professions Code section 2002, as amended and effective
26 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
27 the State Medical Practice Act (Cal. Bus. & Prof. Code, section 2000, et seq.) means the “Medical
28 Board of California,” and references to the “Division of Medical Quality” and “Division of
Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 “(2) The report required by this subdivision shall be made in writing within 30 days of the
2 date of the bringing of the indictment or information or of the conviction.

3 “(b) Failure to make a report required by this section shall be a public offense punishable by
4 a fine not to exceed five thousand dollars (\$5,000).”

5 FIRST CAUSE FOR DISCIPLINE

6 (Conviction of Crime)

7 9. Respondent is subject to disciplinary action under section 2236 of the Code, in that he
8 was convicted of a crime substantially related to the qualifications, functions or duties of a
9 physician. The circumstances are as follows:

10 10. On or about November 5, 2014, in the case entitled *The People of the State of*
11 *California v. Tomas Ballesteros Rios*, Kern County Superior Court Case No. BF141700F,
12 Respondent was convicted of violating California Penal Code section 182 (Conspiracy to Commit
13 Insurance Fraud).

14 11. As a result of said plea, Respondent was sentenced to three (3) years felony
15 probation, with terms and conditions, and payment of fines and restitution, including the
16 completion of 350 hours of community service.

17 SECOND CAUSE FOR DISCIPLINE

18 (Failure to Report Conviction)

19 12. Respondent is subject to disciplinary action under sections 2234, subdivision (a), and
20 section 802.1, of the Code, in that he was convicted of a crime substantially related to the
21 qualifications, functions or duties of a physician and failed to report said conviction to the Board.
22 The circumstances are as follows:

23 13. Paragraphs 10 through 11, inclusive, above are incorporated by reference herein as if
24 fully set forth.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action for unprofessional conduct under section 2234 of the Code.

15. Paragraphs 10 through 11, inclusive, above are incorporated by reference herein as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Dishonest/Corrupt Acts)

16. By reason of the facts and opinions set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action for dishonest/corrupt acts under section 2234, subdivision (e), of the Code.

17. Paragraphs 10 through 11, inclusive, above are incorporated by reference herein 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 A54078, issued to Tomas Ballesteros Rios, M.D.;

2. Revoking, suspending or denying approval of Tomas Ballesteros Rios, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

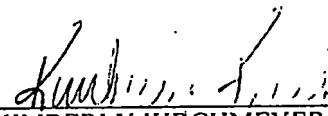
3. Ordering Tomas Ballesteros Rios, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Tomas Ballesteros Rios, M.D. to pay fines and penalties pursuant to section 802.1 of the Code; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: October 1, 2015


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

LA2015602849
61662718.doc