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

In the Matter of the Accusation/Petition to Revoke Probation Against, **TOMAS BALLESTEROS RIOS, M.D.** **300 Wai Nani Way, PH 12** **Honolulu, HI 96815** **Physician's and Surgeon's Certificate No. A 54078,** One.	Case No. 800-2019-053786 **DEFAULT DECISION AND ORDER** [Gov. Code, § 11520]

FINDINGS OF FACT

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

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

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.

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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.

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ORDER

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

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 15 2021.

It is so ORDERED DEC 18 2020

Jenne Jones for William Prasifka
FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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Attorneys for Complainant

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

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **TOMAS BALLESTEROS RIOS, M.D.** **300 Wai Nani Way, PH 12** **Honolulu, HI 96815** **Physician's and Surgeon's Certificate No. A 54078,** Respondent.	Case No. 800-2019-053786 ACCUSATION AND PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

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

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

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

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

JURISDICTION

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

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

"Violation of Probation.

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

6. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of

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

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

7. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption 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.

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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

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

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

SECOND CAUSE TO REVOKE PROBATION

(Maintain Current License)

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

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

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

THIRD CAUSE TO REVOKE PROBATION

(Non-Practice Exceeding Two Years)

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

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

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

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

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

"1) Non-Practice While on Probation will exceed 18 calendar months on June 30, 2018. You will be required to successfully complete a Board approved clinical training program prior to resuming to the practice of medicine [sic]

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

(Bus. & Prof. Code, §2234)

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

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

DISCIPLINE CONSIDERATIONS

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

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

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

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 54078, issued to Tomas Ballesteros Rios, M.D.;

2. Revoking, suspending or denying approval of Tomas Ballesteros Rios, M.D.'s authority to supervise physician's assistants, and advanced practice nurses;

3. Ordering Tomas Ballesteros Rios, M.D. to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

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

DATED: July 18, 2019

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

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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.	)	Case No. 19-2012-225650
Physician's and Surgeon's Certificate No. A 54078	)	
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 December 30, 2016.

IT IS SO ORDERED: December 2, 2016.

MEDICAL BOARD OF CALIFORNIA

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

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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: **TOMAS BALLESTEROS RIOS, M.D.** **9807 Lightner Way** **Bakersfield, CA 93311** **Physician's and Surgeon's Certificate No. A54078** Respondent.	Case No. 19-2012-225650 OAH No. 2015121015 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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

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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.

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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 No. 19-2012-225650. and that he has thereby subjected his Physician's and Surgeon's Certificate No. A54078 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 probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

13. 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.

14. 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

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

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

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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.

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

A professionalism program 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

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

appropriate practice setting is established.

STANDARD CONDITIONS

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

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

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

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

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

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

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

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

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such

addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(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

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

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

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

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

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

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

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

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

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

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

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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

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Exhibit A

Accusation No. 19-2012-225650

KAMALA D. HARRIS
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Attorneys for Complainant

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

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.** **1436 Crestmont Drive, Unit 6726** **Bakersfield, CA 93386-7036** **Physician's and Surgeon's Certificate No. A54078,** Respondent.	Case No. 19-2012-225650 **ACCUSATION**

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 March 29, 1995, the Medical Board issued Physician's and Surgeon's Certificate Number 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 herein and will expire on December 31, 2016, unless renewed.

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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:

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"(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."

7. Section 2236 of the Code states:

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

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

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality[1] of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

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

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

8. Section 802.1 of the Code states:

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

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

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

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[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, section 2000, et.seq.) means the "Medical 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.

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

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime)

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

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

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

SECOND CAUSE FOR DISCIPLINE

(Failure to Report Conviction)

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

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

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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

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

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