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

In the Matter of the Accusation Against: Elena V. Sagayan, M.D. Physician's & Surgeon's Certificate No A 92311 Respondent	Case No. 800-2017-029986

DECISION

The attached Stipulated Settlement for Public Reprimand 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 June 25, 2021.

IT IS SO ORDERED May 26, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LYNNE K. DOMBROWSKI
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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: **ELENA V. SAGAYAN, M.D.** The Permanente Medical Group Inc. 3000 Las Positas Road Livermore, CA 94551 Physician's and Surgeon's Certificate No. A 92311 Respondent.	Case No. 800-2017-029986 OAH No. 2020110109 **STIPULATED SETTLEMENT FOR PUBLIC REPRIMAND AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brings this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Lynne K. Dombrowski, Deputy Attorney General.

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2. Respondent Elena V. Sagayan, M.D. (Respondent) is represented in this proceeding by attorney Ann H. Larson, whose address is: Craddick, Candland & Conti, 2420 Camino Ramon, Suite 202, San Ramon, CA 94583-4202, E-mail: alarson@ccclawfirm.com.

3. On or about July 27, 2005, the Board issued Physician's and Surgeon's Certificate No. A 92311 to Elena V. Sagayan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-029986, and will expire on June 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-029986 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 7, 2019. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-029986 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-029986. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement for Public Reprimand and Disciplinary Order.

7. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her 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 understands and agrees that the charges and allegations in Accusation No. 800-2017-029986, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest those charges.

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 for Public Reprimand 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 for Public Reprimand 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 opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent Elena V. Sagayan, M.D.'s Physician's and Surgeon's Certificate No. A 92311 shall be and hereby is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in connection with Respondent's conduct as set forth in Accusation No. 800-2017-029986, is as follows:

> You demonstrated unprofessional conduct with regard to your care and treatment of Patient A, pursuant to Business and Professions Code section 2234, subdivision (c).

B. EDUCATION COURSE.

IT IS FURTHER ORDERED that within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s), which shall not be less than 8 hours total, that shall be aimed at physician management of labor and delivery for high-risk patients and that shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall successfully complete the 8 hours of educational courses within one year from the effective date of the Decision.

Course(s) 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(s) would have been approved by the Board or its designee had the course been taken after the effective date of the Decision.

Respondent shall submit a certification of successful completion of the 8 hours of educational course(s) to the Board or its designee not later than 15 calendar days after successfully completing the course(s), or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement for Public Reprimand and Disciplinary Order and have fully discussed it with my attorney, Ann H. Larson. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement for Public Reprimand and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/10/2021

ELENA V. SAGAYAN, M.D.
Respondent

I have read and fully discussed with Respondent Elena V. Sagayan, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement for Public Reprimand and Disciplinary Order. I approve its form and content.

DATED: 3/11/21

ANN H. LARSON
CRADDICK, CANDLAND & CONTI
Attorney for Respondent

ENDORSEMENT

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

DATED: 03/12/2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

Lynne K. Dombrowski

LYNNE K. DOMBROWSKI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-029986

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 7 20 19
BY [illegible] ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2017-029986
Elena V. Sagayan, M.D. The Permanente Medical Group Inc. 3000 Las Positas Road Livermore, CA 94551 **Physician's and Surgeon's Certificate No. A 92311,** Respondent.	**A C C U S A T I O N**

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 July 27, 2005, the Medical Board issued Physician's and Surgeon's Certificate Number A 92311 to Elena V. Sagayan, 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 June 30, 2021, 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 (Code) unless otherwise indicated.

4. 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.

5. Section 2234 of the Code, states, in relevant part:

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

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, and/or Repeated Negligent Acts)

6. Respondent Elena V. Sagayan, M.D. is subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234 (b) [gross negligence], and/or 2234(c) [repeated negligent acts] based on the care provided to Patient A.[1] The circumstances are as follows:

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[1] The term "Patient A" is used to protect the patient's privacy. Respondent learned the (continued...)

7. On or about, July 19, 2011, Patient A presented to the Kaiser Permanente, Antioch Labor and Delivery Unit with leaking amniotic fluid. Patient A was 27 years old, and 40 weeks pregnant with an expected delivery date of July 18, 2011. A Certified Nurse Midwife (CNM) evaluated Patient A and determined that she was dilated to 3.5 centimeters (cm), 75% effaced,[2] and at -3 station.[3] The fetal heart tracings (FHT) were classified as Category I with a Fetal Heart Rate (FHR) of 155 beats per minute (bpm), minimal variability and accelerations.[4] Patient A also tested positive for Group B Strep (GBS).[5] After further observation, she was cleared for discharge.

8. On or about July 20, 2011, at approximately 10:30 p.m., Patient A returned to the Labor and Delivery Unit with complaints of contractions. Patient A was placed under the care of a CNM, who Respondent was responsible for supervising. A registered nurse evaluated Patient A at admission and determined she was 4-5 cm dilated, 90% effaced, and at -4 station. The FHT showed a FHR of 170 bpm with minimal variability. The FHR baseline remained at 170 bpm with improved variability but also had variable decelerations. When Patient A's contractions were every minute and a half to three minutes the FHR increased to 175 to 180 bpm. Respondent did not review Patient A's FHT at admission, including from the July 19, 2011 admission.

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(...continued)
identity of the patient during the investigation.

[2] Effaced means how far the cervix has stretched and thinned to prepare for delivery.

[3] Station means how far the fetus has descended into the pelvis.

[4] Fetal heart tracing categories are classified as I, II, or III. Category I is a normal baseline rate. Category II indicates that the tracing is neither a Category I nor III and is not normal or definitively abnormal. Category III indicates that the fetus' heart rate is clearly abnormal with either recurrent late decelerations, recurrent variable decelerations, or bradycardic. Category III tracings are associated with an increased risk of neonatal encephalopathy, cerebral palsy, or fetal acidemia. The FHR normally ranges between 120 to 160 beats per minute. FHR's above 160 are considered tachycardic while FHR's below 120 are considered bradycardic. FHT's that are called variable mean that that the FHR is fluctuating. Persistent or absent variability of FHR's are a major indication that the fetus is in danger.

[5] GBS means Group B streptococcus which is a type of bacterial infection found in the vagina or rectum and can be passed to the baby during delivery and can cause serious health issues to the baby if transmitted.

9. At approximately 1:02 a.m. on July 21, 2011, Patient A's membranes ruptured and the nurse described the fluid as a thick, particulate meconium with a foul odor. The FHR remained at 180 bpm until approximately 1:30 a.m. At approximately 1:11 a.m., the nurse or CNM notified Respondent of the rupture of membranes, as well as the prolonged deceleration of the FHR with minimal variability. Respondent ordered penicillin prophylactically, but Respondent did not conduct any further assessment of the patient to ensure fetal oxygenation had not been interrupted. Respondent failed to take measures to assess the risk of infection or whether the amniotic sac was compromised: she did not order testing with nitrazine paper to identify changes in the vaginal pH, did not order Valsalva[6] maneuvers or ambulation of the patient to push additional fluid out of the uterus while under pressure, and did not swab the vaginal fluid to look under a microscope whether there was amniotic fluid present. Furthermore, Respondent failed to assess the amniotic fluid levels by way of an ultrasound.

10. At approximately 2:12 a.m., an anesthesiologist administered an epidural for Patient A's pain; however, by 2:49 a.m. the nurse noted that the FHT's showed prolonged decelerations and FHR of 90 bpm and the nurse called the CNM. After 3:00 a.m., the nurse noted that there was a shift and the FHT's showed decelerations with a FHR of 140 bpm. Then a one minute deceleration occurred, followed by another 90 second deceleration associated with four contractions in a five minute period. At 3:40 a.m., Patient A was completely dilated but the FHR was 90 bpm with severe fetal bradycardia.

11. At 3:52 a.m. a Code C[7] was called and Respondent responded to the Labor and Delivery operating room at 3:59 a.m. Respondent noted that the epidural was not sufficient anesthesia and general anesthesia was administered. Respondent also observed that Patient A was having tetanic contractions and ordered terbutaline.[8] Respondent also administered local

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[6] A Valsalva maneuver is when a person holds his or her breath during exertion, which can increase intra-abdominal pressure.

[7] A Code C means an emergency/life threatening cesarean section is required.

[8] Respondent's Operative Report stated that Patient A was having "Titanic Contractions;" however, it is likely Respondent meant "tetanic contractions." A tetanic contraction is a contraction lasting longer than 90 seconds. Terbutaline is used to prevent and slow contractions in the uterus.

anesthesia to Patient A's abdomen in order to begin the C-section as quickly as possible at 4:05 a.m. Respondent delivered the baby at 4:07 a.m. with a one minute APGAR score of 0/2/4.[9] The baby was eventually diagnosed with hypoxic ischemic encephalopathy due to birth trauma. The pathology report of the placenta noted: "Copious overgrowth of bacteria . . . with abundant meconium-laden microphages . . . (and) villous tissue with chorangiosis."

12. Respondent's conduct, acts, and/or omissions with regard to Patient A constitutes unprofessional conduct (gross negligence and/or repeated negligent acts) based on the following:

a. Respondent did not properly manage the Patient's rupture of membranes;

b. Respondent failed to act upon the recurrent non-reassuring FHR pattern;

c. Respondent did not adequately supervise the CNM, particularly when Patient A was admitted to the Labor and Delivery Unit with increased risk factors and as her labor progressed and her risk factors increased;

d. Respondent also failed to properly monitor the FHT's and then follow-up with the patient after the rupture of membranes with thick meconium discharge; and

e. Respondent failed to coordinate care with the CNM and take over the care of Patient A following the rupture of membranes.

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 92311, issued to Elena V. Sagayan, M.D.;

2. Revoking, suspending or denying approval of Elena V. Sagayan, M.D.'s authority to supervise physician assistants and advanced practice nurses;

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[9] APGAR scores are given to newborns at one and five minutes after birth to evaluate the baby's heart rate, muscle tone, and other signs to determine if emergency treatment is needed. APGAR stands for Appearance, Pulse, Grimace, Activity, and Respiration. Scores are between zero and 10. When a score is on the low end of the scale it means that the baby needs immediate medical care. It is not uncommon to have a low APGAR score one minute after birth, particularly in babies delivered after a high-risk pregnancy or by C-section.

3. Ordering Elena V. Sagayan, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: August 7, 2019

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

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