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

In the Matter of the Accusation Against: Russell Paul Rapoza, M.D. Physician's and Surgeon's License No. G71959 Respondent	Case No. 800-2018-042195

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 February 18, 2021.

IT IS SO ORDERED: January 19, 2021.

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
COLLEEN M. MCGURRIN
Deputy Attorney General
State Bar Number 147250
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6546
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **RUSSELL PAUL RAPOZA, M.D.** **11190 Warner Avenue** **Suite 410** **Fountain Valley, CA 92708** **Physician's and Surgeon's Certificate Number G 71959** Respondent.	Case No. 800-2018-042195 OAH No. 2020070506 **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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Colleen M. McGurrin, Deputy Attorney General.

2. Respondent Russell Paul Rapoza, M.D. (Respondent) is represented in this proceeding by attorneys Dennis K. Ames, Esq. and Pogey Henderson, Esq. of La Follette, Johnson, DeHaas, Fesler & Ames, whose address is 2677 North Main Street, Suite 901, Santa

Ana, CA 92705-6632.

3. On or about July 17, 1991, the Board issued Physician's and Surgeon's Certificate Number G 71959 to Russell Paul Rapoza, 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. 800-2018-042195, and will expire on April 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-042195 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 1, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-042195 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-042195. Respondent has also carefully read, fully discussed with his 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 freely, voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2018-042195, if proven at a hearing, constitute cause for imposing discipline upon his

Physician's and Surgeon's Certificate.

10. Respondent agrees that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-042195, a true and correct copy of which is attached hereto as Exhibit A, that he hereby gives up his right to contest those charges, and has thereby subjected his Physician's and Surgeon's Certificate Number G 71959 to disciplinary action.

11. Respondent acknowledges the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

12. 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.

CONTINGENCY

13. 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.

14. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2018-042195 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

15. 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.

16. 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

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number G 71959 issued to Respondent RUSSELL PAUL RAPOZA, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions:

1. EDUCATION COURSES. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, 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 50 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge, including the areas of twin gestation and concordant and disconcordant growth, high-risk pregnancies, ultrasounds, and/or any other area(s) determined by the Board, its agents or designees, and 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. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 75 hours of CME of which 50 hours were in satisfaction of this condition.

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 approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course

not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

3. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee

which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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 the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

4. 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.

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and

advanced practice nurses.

6. 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.

7. 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.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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, subdivision (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.

9. 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.

10. 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 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. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. 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 the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment 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 for a Respondent residing outside of California 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; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

11. 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.

12. 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.

13. 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.

14. 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.

15. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2018-042195 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys Dennis Ames, Esq. and Pogey Henderson, 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 freely, voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 10/29/20

RUSSELL PAUL RAPOZA, M.D.
Respondent

I have read and fully discussed with Respondent Russell Paul Rapoza, 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: 10/29/20

Pogey Henderson

DENNIS R. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: 10/30/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Colleen M. McGurrin

COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

LA2019504699
63703654.docx

Exhibit A

Accusation No. 800-2018-042195

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
COLLEEN M. MCGURRIN
Deputy Attorney General
State Bar Number 147250
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6546
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: RUSSELL PAUL RAPOZA, M.D. 11190 Warner Avenue, Suite 410 Fountain Valley, California 92708 Physician's and Surgeon's Certificate Number G 71959, Respondent.	Case No. 800-2018-042195 **ACCUSATION**

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California (Board).

2. On July 17, 1991, the Board issued Physician's and Surgeon's Certificate Number G 71959 to Russell Paul Rapoza, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2021, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 477 of the Code states:

As used in this division:

(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

(b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code.

5. Section 2227 of the Code provides, in pertinent part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

(2) . . . .

(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. . . [which] 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) . . . .

6. Section 2228 of the Code provides, in pertinent part:

The authority of the board . . . to discipline a licensee by placing him . . . on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) . . . .

STATUTORY PROVISIONS

7. Section 2234 of the Code, provides, in pertinent part:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly . . . 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) . . . (h).

8. Section 2266 of the Code states, "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent Russell Paul Rapoza, M.D. is subject to disciplinary action under Code section 2234, subdivision (b), in that he committed acts and omissions constituting gross negligence in his care and treatment of Patient A.[1] The circumstances are as follows:

10. On or about May 21, 2016, Patient A, a then twenty-nine-year-old Chinese speaking female, first presented to Respondent for pre-natal care. She had received the majority of her pre-

[1] For privacy, the patient is identified as Patient A. The patient's full name will be disclosed to Respondent upon a timely request for discovery pursuant to Government Code section 11507.6.

natal care in China and had an estimated due date (EDD) of August 11, 2016. On that visit, Respondent noted that the patient was in her second trimester and was pregnant with twins; however, he did not record her weight. He performed a limited in-office ultrasound[2] which reflected the following:

5/21/16	Biparietal Diameter (BPD)[3]	Abdominal Circumference (AC)	Femur length (FL)	Head Circumference (HC)	Estimated Fetal Weight (EFW)
Fetus 1	7.74	21.78	4.77/6.10/5.44[4]	Not recorded	2 lbs. 6 oz.
Fetus 2	7.31	23.47	5.84	Not recorded	2 lbs. 15 oz.

However, Respondent failed to perform the basic components of a limited ultrasound for twin gestation, which includes ordering of the fetuses by order ascending from the vagina, the presentation of each fetus, a comment on amniotic fluid, the presence of fetal heart rates, and placental location. Respondent's initial encounter progress note is sparse and failed to document the zygosity[5] or chorionicity[6] of the twin gestation, whether they shared a placenta, a description of each fetal presentation (e.g., vertex, breech, etc.), or the twins' fetal heart rates. He further failed to retain the ultrasound images in the patient's chart, to document any communication with the patient, who did not speak English, or to indicate if an interpreter was utilized during the

---

[2] An ultrasound is a test in which sound waves are used to examine inner parts of the body. During pregnancy, ultrasounds can be used to check the fetus(es).

[3] Biparietal diameter, abbreviated as BPD, is one of the basic biometric parameters used to assess fetal size. It measures the diameter of the fetal head between the two parietal eminences (a projection or protuberance from the surface of a body part, especially a bone). Combined, the BPD, HC, AC and FL measurements are computed to produce an estimated fetal weight (EFW).

[4] During the May 21, 2016 and June 28, 2016 ultrasound studies Respondent repeated some measurements (represented by the first two numbers separated by a slash mark) and then averaged the results (represented by the last number).

[5] Zygosity, in the case of twin gestation, is whether the fetuses developed from one zygote (monozygotic twins) or two zygotes (dizygotic twins).

[6] Chorionicity is the number of chorionic (outer) membranes that surround the fetuses in a multiple pregnancy.

patient encounter.

11. On or about June 2, 2016, Patient A returned for a follow-up visit at which the Respondent documented that there was good concordant[7] interval growth between the twins; however, he did not perform an ultrasound on this visit nor did he record the patient's weight. As with the prior visit, Respondent's progress note is extremely sparse, lacks detail and fails to document any communication with the patient, who did not speak English, or to indicate if an interpreter was utilized during the patient encounter.

12. On or about June 14, 2016, Respondent saw the patient again for a follow-up visit at which he performed another limited in-office ultrasound that reflected the following:

6/14/16	Biparietal Diameter (BPD)	Abdominal Circumference (AC)	Femur length (FL)	Head circumference (HC)	Estimated Fetal Weight (EFW)
Fetus 1	9.31	23.93	5.55	Not recorded	3 lbs. 4 oz.
Fetus 2	8.64	28.33	6.74	Not recorded	4 lbs. 14 oz.

Respondent documented that there was good concordant interval growth; however, he failed to recognize the 33% discordancy[8] of the twins' growth that should have immediately required further work-up by ordering serial nonstress tests[9], biophysical profile[10], or stress test, and/or consulting with or referring the patient to a perinatologist (a maternal-fetal medicine specialist) for further care. Assessing fetal risk of discordant growth and detection of intrauterine growth restriction[11] (IUGR) is critical to assuring an optimal outcome for twin pregnancies.

---

[7] Concordant is defined as similar with respect to one or more particular characters.

[8] Discordant is defined as dissimilar with respect to one or more particular characters and is characterized by large difference in the size of the fetuses in a woman carrying more than one fetus during the same pregnancy.

[9] Nonstress test, abbreviated NST, is a test in which changes in the fetal heart rate are recorded using an electronic fetal monitor.

[10] Biophysical profile, abbreviated BPP, is a technique for evaluating fetal status using fetal heart rate monitoring and ultrasound assessment of amniotic fluid volume, fetal movement, and fetal breathing motion.

[11] Intrauterine growth restriction/retardation, abbreviated IUGR, occurs when the unborn baby is at or below the 10th weight percentile for his or her age (in weeks).

Discordancy of greater that 20% requires the initiation of fetal surveillance and possible referral for perinatal consultation.

Respondent failed to recognize the IUGR discordancy by ultrasound and to act appropriately. He further failed to perform the basic components of a limited ultrasound for twin gestation, which includes ordering of the fetuses by order ascending from the vagina, the presentation of each fetus, a comment on amniotic fluid, the presence of fetal heart rates, and placental location. He failed to document the zygosity or chorionicity of the twin gestation, whether they shared a placenta, a description of the fetal presentation (e.g., vertex, breech, etc.), or the twins' fetal heart rates. In addition, he failed to document the patient's weight, retain the ultrasound images in the patient's chart, document any communication with the patient who did not speak English, or to indicate if an interpreter was utilized during the patient encounter.

13. On or about June 28, 2016, Patient A returned for a further follow-up visit where Respondent performed another limited in-office ultrasound, which reflected the following:

6/28/16	Biparietal Diameter (BPD)	Abdominal Circumference (AC)	Femur length (FL)	Head circumference (HC)	Estimated Fetal Weight (EFW)
Fetus 1	9.06/9.20/9.14	27.29/27.19/27.24	6.29	Not recorded	4 lbs. 6 oz.
Fetus 2	8.97	30.68	7.05	Not recorded	5 lbs. 15 oz.

Respondent documented that there was good concordant interval growth between the fetuses; however, he failed to recognize the 24% discordancy of the twins' growth that should have immediately required further work-up or consultation with or referral to a perinatologist. He further failed to perform the basic components of a limited ultrasound for twin gestation, and to document the zygosity or chorionicity of the twin gestation, whether they shared a placenta, a description of the fetal presentation (e.g., vertex, breech, etc.) or the twins' fetal heart rates. In addition, he failed to document the patient's weight, retain the ultrasound images in the patient's chart, document any communication with the patient, who did not speak English, or to indicate if an interpreter was utilized during the patient encounter.

14. On or about July 2, 2016, at approximately 3:18 a.m., Patient A was admitted to Fountain Valley Regional Medical Center (FVRMC) hospital for ruptured membranes and active labor. At 3:37 a.m., the hospitalist was notified of the patient's arrival with a twin pregnancy. At 4:13 a.m., Respondent placed an order for fetal monitoring. At 4:20 a.m., the hospitalist performed an ultrasound at bedside, but was only able to find one heartbeat. At 4:30 a.m., no contractions or fetal heart rate tracing were obtained. At 4:35 a.m., the hospitalist attempted to obtain the fetal heart rate tracing, but was unable to. At 4:36 a.m., the hospitalist called Respondent to perform a Cesarean section.[12]

At 4:41 a.m., Respondent saw Patient A and dictated a pre-operative history and physical, noting that Patient A had spontaneous ruptured membranes at 34 weeks, was in active labor, and that he planned to perform a C-section; however, he failed to document a pelvic examination, why he intended to perform a C-section, to comment upon the fetal well-being and whether he knew of the demise of Twin A, or document any confirmation of the ruptured membranes. He thereafter performed a C-section and delivered the twins. Unfortunately, Twin A, a boy, was stillborn with no cardiac motion at delivery. In his operative report, Respondent failed to describe the delivery of the two fetuses, the complication of the demised Twin A, or that specimens were sent to pathology for testing.

15. On or about July 8, 2016, an autopsy was performed on demised Twin A, who was noted to be of diamniotic-dichorinic twin gestation.[13] The autopsy revealed no known cause for the death of Twin A.

16. Respondent's acts and omissions, individually and collectively, constitute extreme departures from the standard of care, in that he:

A. Failed to monitor the overall well-being of Patient A and the twin gestation;

---

[12] A Cesarean section, also known as a C-section, is a surgical procedure involving incision of the walls of the abdomen and uterus for delivery of a fetus or fetuses.

[13] Dichorionic-diamiotic is where each twin has its own chorions (the outer membrane that surrounds the fetus) and amniotic sacs and do not share a placenta. Monochorionic-diamniotic, where the twins share a chorion but have separate amniotic sacs. Monochorionic-monoamniotic, where the twins share one chorion and one amniotic sac. This is the first and only time that the physiology/pathophysiology of the twins' gestation was documented.

B. Failed to perform the basic components of a limited ultrasound evaluations, which included ordering of the fetuses by order ascending from the vagina, the presentation of each fetus, a comment on amniotic fluid, the presence of fetal heart rates, and placental location;

C. Failed to recognize the discordant growth between the twins and timely act by immediately performing further work-up by ordering serial nonstress tests (NST), biophysical profile (BPP), or stress testing, and/or consult with, or refer the patient to a perinatologist for specialized care; and

D. Failed to maintain adequate and accurate records.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. Respondent Russell Paul Rapoza, M.D. is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care and treatment of Patient A. The circumstances are as follows:

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

19. Respondent's acts and omissions constitute repeated negligent acts from the standard of care, in that he:

A. Failed to monitor the overall well-being of the patient and the twin gestation;

B. Failed to perform the basic components of a limited ultrasound evaluations, which included ordering of the fetuses by order ascending from the vagina, the presentation of each fetus, a comment on amniotic fluid, the presence of fetal heart rates, and placental location;

C. Failed to recognize the discordant growth between the twins and timely act by immediately performing further work-up by ordering serial nonstress tests (NST), biophysical profile (BPP), or stress testing, and/or consult with, or refer the patient to a perinatologist for specialized care;

///

D. Failed to document any communication with the patient, who did not speak English, or to indicate if an interpreter was used during the patient encounter; and

E. Failed to maintain adequate and accurate records.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

20. By reason of the acts and omissions set forth above in paragraphs 10 through 15, Respondent Russell Paul Rapoza, M.D. is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records in his care and treatment of Patient A.

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 G 71959, issued to Russell Paul Rapoza, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

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

DATED: APR 01 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

LA2019504699
Revised 032720