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**BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA**

\* \* \* \* \*

**In the Matter of Charges and** )  
 )  
**Complaint Against** )  
 )  
**Hector Rodriguez, M.D.,** )  
 )  
**Respondent.** )

**Case No. 17-30588-1**

**FILED**

**MAY 22 2017**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: \_\_\_\_\_

**COMPLAINT**

The Investigative Committee<sup>1</sup> (IC) of the Nevada State Board of Medical Examiners, by and through Jasmine Mehta, Esq., Deputy General Counsel, hereby issues this formal complaint against Hector Rodriguez, M.D. (hereinafter referred to as Dr. Rodriguez or Respondent), a licensed physician in Nevada. After investigating this matter, the IC has a reasonable basis to believe that Respondent has violated provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act).

The IC alleges the following facts:

1. Respondent is currently licensed in active status (License No. 11629). Respondent was issued his license from the Nevada State Board of Medical Examiners on September 10, 2005, pursuant to the provisions of NRS Chapter 630.

2. On December 12, 2014, the California Medical Board filed an Accusation against Respondent. The Accusation alleged that on August 28, 2014, the Nevada State Board of Medical Examiners had issued an Order of Suspension regarding Respondent's license to practice

<sup>1</sup> The Investigative Committee of the Nevada State Board of Medical Examiners, at the time the filing of this Complaint was approved, was composed of Wayne Hardwick, M.D., Theodore B. Berndt, M.D., and Mr. M. Neil Duxbury.

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

1105 Terminal Way #301

Reno, Nevada 89502

(775) 688-2559

1 medicine in Nevada based on his disruptive behavior and refusal to submit to drug testing at  
2 Summerlin Hospital in Las Vegas, which resulted in the suspension of his privileges at that  
3 facility on or about May 28, 2014. It was alleged that on or about May 29, 2014, his privileges at  
4 three additional facilities were summarily suspended. It was further alleged that on or about  
5 August 20, 2014, Respondent failed to appear at a Fair Hearing on the hospital suspensions.

6 3. On August 28, 2015, the California Medical Board filed a First Amended  
7 Accusation against Respondent. The First Amended Accusation stated that the Nevada State  
8 Board of Medical Examiners issued an Order on or about November 24, 2014 extending  
9 Respondent's summary suspension until he completed certain terms and conditions, and that the  
10 summary suspension was lifted on or about August 13, 2015. The First Amended Accusation  
11 added a cause of action against Respondent for failing to disclose to a California hospital on his  
12 application for medical privileges that his privileges to practice at four Valley Health System  
13 hospitals had been summarily suspended on May 28 and 29, 2014 as a result of his disruptive  
14 behavior and refusal to submit to drug testing. It was further alleged that Respondent answered  
15 "no" to the question of whether any action had ever been initiated or taken to deny, limit, suspend,  
16 or revoke his license to practice medicine in any state.

17 4. On December 30, 2015, following a hearing before an Administrative Law Judge,  
18 the California Medical Board entered a Decision against Respondent. The Decision revoked  
19 Respondent's California medical license. The revocation was stayed, however, and Respondent  
20 was placed on probation, pending the fulfillment of certain requirements by Respondent, including  
21 a psychiatric evaluation, continued psychotherapy treatment, continuing medical education  
22 requirements, enrollment in a professionalism program, provision of notice of the Decision and  
23 Accusation to the Chief of Staff at every hospital where Respondent had privileges and facility  
24 where he practiced medicine, a prohibition on the supervision of physician assistants, and  
25 quarterly reports to the California Medical Board regarding his compliance with the probation  
26 terms.

27 5. On or about June 29, 2015, Respondent submitted his application to renew his  
28 Nevada medical license.



Count II

(NRS 630.306(1)(k))

14. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

15. NRS 630.306(1)(k) provides that failure by a licensee or applicant to report in writing, within 30 days, any disciplinary action taken against the licensee or applicant by another state, the Federal Government or a foreign country, including, without limitation, the revocation, suspension or surrender of a license to practice medicine in another jurisdiction, is grounds for initiating disciplinary action.

16. Respondent was disciplined by the California Medical Board as described above.

17. Respondent failed to timely report the disciplinary action taken by the California Medical Board.

18. Accordingly, Respondent is in violation of NRS 630.306(1)(k).

19. By reason of the foregoing, Respondent is subject to discipline by the Nevada State Board of Medical Examiners as provided in NRS 630.352.

Count III

(NRS 630.304(1))

20. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

21. NRS 630.304(1) provides that obtaining, maintaining or renewing or attempting to obtain, maintain or renew a license to practice medicine by bribery, fraud or misrepresentation or by any false, misleading, inaccurate or incomplete statement is grounds for initiating disciplinary action.

22. Respondent answered "no" to the license renewal application question asking whether he had been asked to respond to an investigation, notified he was under an investigation, investigated, charged with, or convicted of any violation of a statute, rule or regulation governing his practice as a physician by any medical licensing board on his license renewal application dated June 29, 2015.

1           23.    The California Medical Board had filed an Accusation against Respondent on  
2 December 12, 2014, and such Accusation remained pending during Respondent's submission of  
3 his Nevada license renewal application.

4           24.    Accordingly, Respondent's answer on the license renewal application was false.

5           25.    By reason of the foregoing, Respondent is subject to discipline by the Nevada State  
6 Board of Medical Examiners as provided in NRS 630.352.

7           **WHEREFORE**, the Investigative Committee prays:

8           1.    That the Nevada State Board of Medical Examiners give Respondent notice of the  
9 charges herein against him and give him notice that he may file an answer to the Complaint herein  
10 as set forth in NRS 630.339(2) within twenty (20) days of service of the Complaint;

11           2.    That the Nevada State Board of Medical Examiners set a time and place for a  
12 formal hearing after holding an Early Case Conference pursuant to NRS 630.339(3);

13           3.    That the Nevada State Board of Medical Examiners determine what sanctions to  
14 impose if it determines there has been a violation or violations of the Medical Practice Act  
15 committed by Respondent;

16           4.    That the Nevada State Board of Medical Examiners make, issue and serve on  
17 Respondent its findings of fact, conclusions of law and order, in writing, that includes the  
18 sanctions imposed; and

19           5.    That the Nevada State Board of Medical Examiners take such other and further  
20 action as may be just and proper in these premises.

21           DATED this 22 day of May, 2017.

22                                   INVESTIGATIVE COMMITTEE OF  
23                                   THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

24           By: \_\_\_\_\_

25                                   Robert Kilroy, Esq.

26                                   General Counsel and Attorney for the Investigative Committee

27                                   Jasmine K. Mehta, Esq.

28                                   Deputy General Counsel and Attorney for the Investigative  
                                  Committee


VERIFICATION

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STATE OF NEVADA            )  
  : ss.  
COUNTY OF WASHOE        )

Wayne Hardwick, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

DATED this 22<sup>nd</sup> day of MAY, 2017.

  
\_\_\_\_\_  
Wayne Hardwick, M.D.

OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

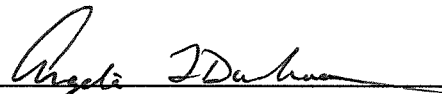
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 14<sup>th</sup> day of June 2017; I served a file copy of COMPLAINT w/exhibit and Fingerprint information, via USPS e-certified return receipt mail to the following:

Hector Rodriguez, Esq.  
1059 S. Sherbourne Dr. Apt. 402  
Los Angeles, CA 90035-2187

Dated this 14<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Angelia L. Donohoe  
Legal Assistant

**EXHIBIT**

**A**

**EXHIBIT**

**A**



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

In the Matter of the Accusation	)	
Against:	)	
	)	
Hector Fernando Rodriguez, M.D.	)	Case No. 800-2014-008536
	)	
Physician's and Surgeon's	)	
Certificate No. A 92346	)	
	)	
Respondent	)	
_____	)	

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 3, Paragraph No. 8, 6<sup>th</sup> line, "at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine" is repeated twice within the quote.
2. Page 13, third paragraph, 8<sup>th</sup> line, "Phases I and I" should be "Phases I and II."
3. Page 14, 3<sup>rd</sup> line of the Order, the word "years" is missing after "five."

The attached Proposed Decision 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 January 29, 2016.

IT IS SO ORDERED: December 30, 2015.

MEDICAL BOARD OF CALIFORNIA



\_\_\_\_\_  
Howard Krauss, Chair  
Panel B

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

In the Matter of the Accusation Against:

HECTOR FERNANDO RODRIGUEZ,  
M.D.

Physician's and Surgeon's Certificate No.  
A92346

Respondent.

Case No. 800-2014-008536

OAH No. 2015070039

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on November 5, 2015.

Emily L. Brinkman, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, the Executive Director of the Medical Board of California, Department of Consumer Affairs.

Liba Agwara, Attorney at Law, represented respondent Hector Fernando Rodriguez, M.D.

The matter was submitted on November 5, 2015.

**FACTUAL FINDINGS**

*License History*

1. On July 29, 2005, the Medical Board of California issued Physician's and Surgeon's Certificate No. A92346 to Hector Fernando Rodriguez, M.D. At all times relevant herein, said certificate was in full force and effect and will expire on December 31, 2016, unless renewed or revoked.

2. On September 10, 2005, the Nevada Board of Medical Examiners granted respondent a medical license on condition that he participated in a drug and alcohol diversion

program. Respondent participated in this program for two years. With the exception of self-report by respondent, no evidence was offered to establish the reason for this condition. In addition, no evidence was offered to establish whether respondent complied with this condition. As he maintained this license until order of summary suspension by the Nevada Board of Medical Examiners in 2014, presumably he complied with this condition.

*Respondent's Background, Education & Experience*

3. Respondent grew up in Los Angeles and completed his undergraduate education at the University of California San Diego. Thereafter he applied for medical school in the United States. After being placed on the "wait list" for medical schools, he completed his medical education at Universidad Autonoma de Guadalajara. He completed the Fifth Pathway Program at New York Medical College, then an internship in general surgery at Catholic Medical Center – Queens Program of New York Medical College, and finally a residency in anesthesia at State University of New York – Brooklyn.

After he completed his residency, respondent returned to the west coast and took a position at a level I trauma center in Las Vegas. Since he did not become board certified in anesthesiology within five years, respondent returned to California. He worked in Bakersfield, Norwalk and Corona as an anesthesiologist. Thereafter, he returned to Las Vegas. After an incident that involved patient death and because of his disruptive behavior and refusal to take a drug test, his employer ordered him to complete the University of California Physician Assessment and Clinical Education Program (PACE Program). His employer reported the foregoing to the Nevada Board of Medical Examiners. Thereafter the Nevada Board of Medical Examiners summarily suspended his license to practice medicine. Thereafter, respondent returned to California, worked at Hemet Valley Medical Center (HVMC). At no time did respondent disclose that his license to practice medicine in Nevada had been suspended. During the background check, this fact came to light, and the job offer was put on hold.

Currently respondent works three days a week at a surgery center, supporting two plastic surgeons, in California.

*First Amended Accusation*

4. Kimberly Kirchmeyer filed Accusation and First Amended Accusation, Case No. 800-2014-008536, in her official capacity as the Executive Director of the Medical Board of California.

*Discipline, Restriction, or Limitation Imposed by Another State (Count 1)*

5. On May 28, 2014, respondent's medical staff membership and clinical privileges were summarily suspended at Summerlin Hospital (a Valley Health System

hospital)<sup>1</sup> in Las Vegas, Nevada, when his behavior became disruptive, and he refused to submit to drug testing.

6. On May 29, 2014, respondent's privileges at Desert Springs Hospital, Spring Valley Hospital and Valley Hospital (all Valley Health System hospitals) were summarily suspended based on concerns about respondent's disruptive behavior and his refusal to submit to drug testing.

7. On August 20, 2014, Valley Health Systems held a single Fair Hearing regarding the above-outlined suspensions. Respondent did not appear at the hearing.

8. On August 28, 2014, effective October 7, 2014, the Nevada Board of Medical Examiners issued an Order of Summary Suspension (Nevada Order) regarding respondent's license to practice medicine. In the order the investigative committee (IC) of the Nevada Board of Medical Examiners determined: "that the health, safety and welfare of the public is at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine is at imminent risk and that a summary suspension of Dr. Rodriguez license to practice medicine in the state of Nevada is necessary to remove the risk of imminent harm to the health, safety and welfare of the public."

9. On November 24, 2014, the Nevada Board of Medical Examiners issued an order extending respondent's summary suspension until he complied with various concerns and conditions that included the following.

- Within one (1) year from the date of this Order, Dr. Rodriguez shall undergo both Phase I and Phase II of the physician assessment at the U.C. San Diego Physician Assessment and Clinical Education Program (PACE Program). This assessment shall include a complete health history, physical examination, and competence and fitness to safely practice anesthesia.
- Within five (5) days of Dr. Rodriguez's or Dr. Rodriguez's representative's receipt of any final or draft report and/or recommendations from the PACE Program, Dr. Rodriguez shall provide the IC<sup>2</sup> with an un-redacted copy of any and all such report and/or recommendations.
- Dr. Rodriguez shall timely and in good faith comply with any and all recommendations of the PACE Program and shall provide the IC with such

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<sup>1</sup> Respondent explained that the Valley Health System hospitals in Las Vegas include four hospitals, to wit: Desert Springs Hospital, Valley Hospital, Spring Mountain Hospital and Summerlin Hospital.

<sup>2</sup> Investigative Committee

evidence as the IC shall, in its reasonable discretion, require from an independent third party, verifying Dr. Rodriguez's compliance with the PACE Program recommendations, if any.

- Within six (6) months from the date of this Order, Dr. Rodriguez shall undergo an alcohol, behavioral and drug assessment at a nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians and is sanctioned by the Federation of State Medical Boards (FSMB) or otherwise approved by the IC and/or Board.
- Within five (5) days of Dr. Rodriguez's or Dr. Rodriguez's representative's receipt of any final or draft report and/or recommendations from the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians, Dr. Rodriguez shall provide the IC with an un-redacted copy of any and all such report and/or recommendations.
- Dr. Rodriguez shall timely and in good faith comply with any and all recommendations of the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians and shall provide the IC with such evidence as the IC shall, in its reasonable discretion, require from an independent third party, verifying Dr. Rodriguez's compliance with the recommendations, if any, of the FSMB-sanctioned or IC- and/or Board-approved nationally recognized alcohol, behavioral and drug center that specializes in assessments of physicians.

The Nevada Order further provided that respondent shall pay all costs associated with the requirements of the order and that he will execute all releases necessary to provide the IC and/or Nevada Board of Medical Examiners with the mandated information. Finally, the Order stated:

Upon verification of Dr. Rodriguez's compliance with the covenants, terms and conditions outlined above, the IC shall timely and in good faith report to the Board Dr. Rodriguez's satisfactory performance and shall recommend that Dr. Rodriguez's license to practice medicine in the state of Nevada be restored to the appropriate licensure status subject to such ongoing monitoring of Dr. Rodriguez's competence and comportment as the Board shall deem appropriate under the totality of circumstances in order to promote and protect the health, safety and welfare of the public.

10. Respondent's conduct and the action of the Nevada Board of Medical Examiners constitute unprofessional conduct.

*Dishonesty/False Representation (Count 2)*

11. Respondent left Las Vegas to work at Hemet Valley Medical Center (HVMC) because he lost his privileges at Valley Health System hospitals in Las Vegas.

12. On June 6, 2014, respondent applied for medical privileges at Physician's for Health HVMC.

- Part of the application to HVMC required respondent to list all hospitals where he currently had medical privileges. Respondent did not list any of the Valley Health System Hospital facilities in Las Vegas.
- On this application, when asked if he had "ever been refused membership on a hospital medical staff or withdrawn your application for membership upon being informed that it would not be acted upon favorably," respondent answered: "Yes."
- On this application, when asked if he had "ever voluntarily/involuntarily terminated your medical staff membership at any hospital or other healthcare setting," respondent answered: "Yes."
- On this application, when asked if his "request for clinical privileges ever been denied, granted with limitations, or withdrawn upon being informed that it would not be acted upon favorably," respondent answered: "Yes."
- On this application, when asked if his "privileges at any hospital or other healthcare setting [have] ever been suspended, diminished, revoked or not renewed for any reason," respondent answered: "Yes."
- On this application, when asked "whether any such hospital actions were pending against him," respondent answered: "No."
- On this application, when asked if he had "ever voluntarily/involuntarily limited, reduced or withdrawn clinical privileges at any hospital or other healthcare setting," respondent answered: "Yes."

13. For the "Yes" answers, respondent provided a written explanation, to wit:

I have been declined membership on hospitals' staff, and [sic] forced to resign my privileges from hospitals because I am not Board Certified by the American Board of Anesthesiology due

to the fact that I am not Board Certified after 5 years of finishing residency. I am, however, Board Eligible/In the System currently with the ABA and am sitting for my written exam July 29, 2014.

I cannot stress enough that my 8 plus years of experience ranging from Level One trauma, to high risk labor and delivery, to pediatrics, spines, neuro, ambulatory care, ASA V patient status should be valued more than my misunderstanding of approaching this exam. Please note that I do have a perfectly clean malpractice history even though I have yet to figure out this written exam.

14. In his application, respondent did not disclose that his privileges to practice at four Valley Health System hospitals were summarily suspended on May 28 and May 29, 2014, as a result of concern about his disruptive behavior and refusal to submit to drug testing.

15. On his application, when asked if any action had ever "been initiated or taken to deny, limit, suspend or revoke" his practice of medicine in any state, respondent answered: "No."

16. On April 29, 2015, an investigator with the Health Quality Investigation Unit on behalf of the Medical Board at the San Bernardino District Office conducted an interview. In addition to the investigator and respondent, present was a deputy attorney general representing complainant. During this interview, respondent admitted that when he was first granted a license by the Nevada Board of Medical Examiners he was required to undergo drug and alcohol testing for the first three years of licensure in Nevada. This amounts to a restriction on his license to practice medicine.<sup>3</sup>

17. During this interview respondent admitted that he knew Summerlin Hospital was conducting a Medical Executive Committee Review of a case involving a patient death and his disruptive behavior. He stated that he left Las Vegas to work at HVMC because he lost his privileges at the Valley Health System hospitals.

18. On October 22, 2014, HVMC suspended respondent's privileges when it learned of the actions taken by the Nevada Board of Medical Examiners and reported this to the Medical Board.

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<sup>3</sup> The Nevada Board of Medical Examiners originally issued respondent a license on September 10, 2005; however this license was contingent on his completion of a drug and alcohol diversion program over the course of three years. During the interview by the investigator on behalf of the medical board, respondent stated three years. During the hearing respondent testified that he spent two years in the program. No documentary evidence was offered to establish whether it was two years or three years.

19. Respondent was dishonest on his application for medical privileges at HVMC

*Response to Charges*

20. Respondent was questioned about the reason that he was placed in the Nevada Board of Medical Examiners' diversion program. Respondent's answer was inconsistent and evasive.

During the PACE Program behavioral evaluation, when asked why the Nevada Board of Medical Examiners decided to send him to the diversion program, respondent stated that Nevada Board of Medical Examiners discovered the "wet and reckless" on his record, which he had not reported.

During the April 2015 interview by the investigator on behalf of the medical board, respondent stated that he "was not sure" why he was placed in the Nevada Board of Medical Examiners diversion program. He said that when he applied for his medical license in Nevada, they [Nevada Board of Medical Examiners] saw a ticket that was a traffic violation that was alcohol related (in 2004) so they felt he needed to be monitored for alcohol. He said it was pled down to a misdemeanor traffic violation. He said that he did not know if they were testing him for other drugs or not. He described the facts and circumstances underlying the offense. He explained that he was pulled over after working all day on Thanksgiving because the law enforcement officers thought that he had been drinking alcohol. Initially he refused to take the field sobriety test but then agreed to do so. He stated that he failed the test because it was 20 degrees outside.

Respondent testified that he was placed in the diversion program because anesthesiologists are "high risk;" presumably he meant that anesthesiologists were at "high risk" for substance abuse. Further, he stated that he was "accused" of driving under the influence. He admitted that he had two beers about three hours before driving; on the urine test, he had a blood alcohol content level of 0.06 percent.

Regarding whether he was "arrested" for an alcohol related offense, respondent testified that he believed the definition of "arrest" was that he had been booked, put in jail, and convicted. As such, in his opinion, he had not been arrested.

21. Respondent addressed the charges in the First Amended Accusation.

- At the April 2015 interview with the investigator and during the hearing, respondent explained his opinion of the facts and circumstances underlying the incident that resulted in the referral to the PACE Program.

While respondent was employed by Valley Health System hospitals, an insured homeless alcoholic patient with significant cirrhosis of the liver came into the emergency room of Summerlin Hospital and required a



surgical consult. The patient expired in the post-anesthesia care unit (PACU). He indicated that the surgeon involved in the case was “just out of residency,” and the emergency room doctor who took the case “sat on it.” In his opinion, he chose the right intervention, despite the patient’s death. During the medical executive committee (MEC) meeting regarding the patient death, respondent explained his version of the facts. Based on peer review, the MEC determined that respondent should attend the PACE program. In respondent’s opinion, he was “blamed” for the patient death; he felt that he was wrongly accused and was the “scapegoat”.

Respondent got legal counsel who advised him not to take a “drug test” unless the surgeon and emergency room doctor was tested also. As a result, respondent refused to take the drug test. Subsequently, respondent agreed to be tested, and all results were negative.

Regarding the allegation of disruptive behavior, respondent testified that there were several incidents with a medical staff administrator and other incidents with an orthopedic surgeon. According to respondent, he was written up for “apparently raising my voice at her [the staff administrator].” So, respondent said that his employer thought that he “needed an evaluation because of raising his voice.” Regarding his confrontations with the orthopedic surgeon, respondent testified that he had raised concerns with the surgeon about taking a patient out of the intensive care unit too early.

- Regarding the Fair Hearing held by Valley Health System on August 20, 2014, respondent did not attend because he did not know about the meeting, probably because of a miscommunication with his lawyer.
- On his application for hospital privileges at HVMC, respondent testified that he did not list the Valley Health System facilities because he did not want them to get the wrong impression of him. He had practiced as an anesthesiologist for 10 years. He felt that he was getting a “bad rap” as a consequence of the incidents in Las Vegas. He did not want to give them the impression that he was incompetent because he was not.
- He was aware that his application stated that the information that he contained in the application was true to the best of his knowledge and that it stated that any substantial omissions or misrepresentations could result in denial, modification or revocation of his clinical privileges. However, he never thought that HVMC would suspend his privileges because, in his opinion, he was a valuable asset to the community.

- Despite the fact that his license was suspended in May 2014 and that he submitted the application to IIVMC in June 2014, respondent testified that he did not disclose the discipline of his license because his attorney was handling the matter; he was “under the assumption” that the matter before the Nevada Board of Medical Examiners was resolved, that the matter was getting resolved. At no time did respondent inform IIVMC that his license had been suspended.
- Respondent successfully completed the PACE Program. The PACE Program issued an assessment report, dated April 22, 2015, that was issued on May 6, 2015. The report includes recommendations including that he participate in an Anger Management class, psychotherapy, a three-month monitoring program with random toxicology screens. Respondent testified that he complied with the recommendations of the PACE Program’s assessment report. He provided documentary evidence to establish that he completed the Anger Management class and commenced psychotherapy.
- On August 13, 2015, the Nevada Board of Medical Examiners lifted the summary suspension of respondent’s license to practice medicine.

22. Respondent offered no testimonial or documentary evidence to establish that he complied with the remaining terms and conditions in the Nevada Order.

23. In the PACE Program assessment report, the psychologist, who performed the behavioral evaluation, summarized his evaluation of respondent as follows:

In summary, Dr. Rodriguez is an anesthesiologist who has been reported to the Medical Executive Committee of the hospitals in which he practiced and to the Nevada Medical Board for disruptive behavior and for his standards of practice. He also has a record of having participated in a Diversion program but denies having problems with alcohol. Based on self-report, Dr. Rodriguez does not have a substance abuse problem. However, a thorough substance abuse assessment requires extensive collateral information. A definitive conclusion cannot be based on self-report. Also, Dr. Rodriguez admits to disruptive behavior, albeit justified in his opinion. This is a belief often held by disruptive physicians. It seems, however, that he has at least in one instance attempted to curve [Sic] this behavior, although he may need additional skills. Finally, in dealings both with the Nevada Medical Board and with potential employers, Dr. Rodriguez had exhibited lack of candor. He has tried to justify this fact by implying that he had good reasons to withhold information, given the circumstances.

24. In the PACE Program assessment report, the psychiatrist, who conducted a psychiatric evaluation, opined that respondent is safe to practice medicine and summarized, in pertinent part:

First, based on the data I am aware of, I have a low suspicion that he has a genuine substance use disorder. It's hard to imagine he would be able to go through two years of a rigorous diversion program with random screening and drug testing, pass this program while working as an anesthesiologist in Las Vegas and have an active, significant substance abuse disorder. Worth noting is that his spotless execution of the mandatory two-year diversion program is by his self-report. He has demonstrated poor judgment in terms of discussing his substance abuse history (i.e. not being fully disclosing) but this does not necessarily point to a substance abuse disorder. Rather, I am of the opinion that this nondisclosing tendency is likely related to his personality style [described below]. On the other hand, it is my opinion that his generally guarded personality style actually just bled over to create the appearance of an issue when there was not one.

In the PACE Program assessment report, the psychiatrist goes into further detail about respondent's personality style.

25. Considering the evidence as a whole, there is no dispute that during the PACE Program psychological and psychiatric evaluations, the interview by the investigator and during the hearing, respondent statements were evasive and lacked candor; however, there is insufficient evidence to establish that he has a substance abuse problem that justifies monitoring by the medical board.

## LEGAL CONCLUSIONS

### *Standard of Proof*

1. The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

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*Relevant Statutes*

2. Section 2227 of the Business and Professions Code<sup>4</sup> states that a licensee who is found guilty under the Medical Practice Act may have his license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded or have such other action taken in relation to discipline as the medical board deems proper.

3. Section 2305 states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

4. Section 141 states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

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<sup>4</sup> Hereinafter all reference is to the Business and Profession Code unless otherwise stated.

5. Section 2234 states, in 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, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[§...§]

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

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

6. Section 2261 states:

Knowingly making or signing any certificate of other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

#### *Violations*

7. Respondent's conduct and the action of the Nevada Board of Medical Examiners constitute unprofessional conduct within the meaning of Section 2305. This conduct is subject to discipline within the meaning of Section 141, subdivision (a).

8. Respondent's license is subject to disciplinary action under Section 2234, subdivisions (a), (e) and (f) in that respondent was dishonest on his application.

#### *Evaluation*

9. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate unfitness to practice. The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect

of the doctor's actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.)

10. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1048.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

11. The medical board issued respondent's Physician's and Surgeon's Certificate 10 years ago. During that time, he has practiced medicine in Nevada and California. Respondent's license was suspended in the State of Nevada based on disruptive behavior and refusal to take a drug test at or about the time of the incident in May 2014. On August 13, 2015, the Nevada Board of Medical Examiners lifted the summary suspension of respondent's license to practice medicine.

Respondent engaged in disruptive behavior while practicing as an anesthesiologist, and he refused to submit to drug testing when requested to do so by his employer. As a consequence his license to practice medicine was suspended until he could complete the PACE Program. He returned to California to practice medicine; he was dishonest and evasive on his application for hospital privileges in California. At no time did he notify the administrators of the HVMC that his license to practice medicine in Nevada had been suspended. Despite discipline by his Nevada employer, suspension of his license to practice medicine in Nevada, evaluation by the PACE Program, successfully passing Phases I and I and some evidence of compliance with the recommendation of the PACE Program, respondent's testimony in this case was evasive and lacking in candor.

Physician honesty is critical. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) "There is no other profession in which one passes so completely within the power and control of another as does the medical patient." (*Shea v. Board of Medical Examiners, supra*, 81 Cal.App.3d at p.578.) "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-3, citing *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

As such, a period of probation with appropriate terms and conditions are necessary to protect the public.

## ORDER

Physician's and Surgeon's Certificate Number A 92346 issued to Hector Fernando Rodriguez, M.D. is revoked. However, the order of revocation is stayed, and is placed on probation for five upon the following terms and conditions.

### **1. Psychiatric Evaluation**

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the medical board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed board certified psychiatrist, who shall consider any information provided by the medical board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the medical board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

### **2. Psychotherapy**

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the medical board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the medical board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the medical or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the medical board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the medical board or its designee. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the medical board shall retain continuing jurisdiction over respondent's license, and the period of probation shall be extended until the medical board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy.

### **3. Education Course**

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the medical board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 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 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 medical board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

### **4. 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, 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 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 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 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 medical board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the medical 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 medical 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.

### **5. Notification**

Within seven days of the effective date of this Decision, 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. He shall submit proof of compliance to the medical board or its designee within 15 calendar days.

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

**6. Supervision of Physician Assistants**

During probation, respondent is prohibited from supervising physician assistants.

**7. 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.

**8. Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the medical 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.

**9. General Probation Requirements**

- A. ***Compliance with Probation Unit*** – Respondent shall comply with the medical board’s probation unit and all terms and conditions of this Decision.
- B. ***Address Changes*** – At all times, respondent shall keep the medical board informed of respondent’s business and residence addresses, email address (if available), and telephone number(s). Changes of such addresses shall be immediately communicated in writing to the medical 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).
- C. ***Places of Practice*** - Respondent shall not engage in the practice of medicine in his place of residence. Except as required by Pacific Medical Care Mobile Services, respondent shall not engage in the practice of medicine in a patient’s place of residence. Should respondent cease employment with Pacific Mobile Services, respondent

shall not engage in the practice of medicine in respondent's or a patient's place of residence unless the patient resides in a skilled nursing facility or other similar licensed facility.

- D. *License Renewal* - Respondent shall maintain a current and renewed California Physician's and Surgeon's Certificate.
- E. *Travel or Residence Outside California* - Respondent shall immediately inform the medical board or its designee, in writing, of travel to any areas outside the jurisdiction of California that lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent leaves the State of California to reside or to practice, respondent shall notify the medical board or its designee in writing 30 calendar days prior to the dates of departure and return.

#### **10. Interview with the Medical Board or Designee**

Upon request for interviews, respondent shall be available in person either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

#### **11. Non-practice While on Probation**

Respondent shall notify the medical 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, as defined in Business and Professions Code sections 2051 and 2052, is any period of time that respondent is not practicing medicine in California, for at least 40 hours in a calendar month, in direct patient care, clinical activity or teaching, or other activity as approved by the medical board. All time spent in an intensive training program that has been approved by the medical 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 medical 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, prior to resuming the practice of medicine, respondent shall successfully complete a clinical training program that meets the criteria of Condition 14 of this Order.

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

**12. Probation Monitoring Costs**

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

**13. 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, after giving respondent notice and the opportunity to be heard, the medical board may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the medical board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

**14. 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 license. The medical 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, within 15 calendar days, respondent shall deliver his wallet and wall certificate to the medical board or its designee, and he 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.

**15. 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.

DATED: December 7, 2015

DocuSigned by:  
*vallera johnson*

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

Medical Board of California

I do hereby Certify that this document is a true and correct copy of the original on file in this office.

Bill Johnston  
Signature

For the Custodian of Records  
Title

January 27, 2016  
Date