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

In the Matter of the Accusation Against:

EDGARDO GRACIA-OLEA, M.D.
954 Corte Maria Avenue
Chula Vista, CA 91911

**Physician's and Surgeon's
Certificate No. A 33843**

Case No. 10-2009-198868

**AGREEMENT FOR
SURRENDER OF LICENSE**

Respondent.

TO ALL PARTIES:

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

1. Complainant, Linda K. Whitney, is the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").
2. EDGARDO GRACIA-OLEA, M.D., ("Respondent") has carefully read and fully understands the effect of this Agreement.
3. Respondent understands that by signing this Agreement he is enabling the Board to issue this order accepting the surrender of license without further process. Respondent understands and agrees that Board staff and counsel for complainant may communicate directly with the Board regarding this Agreement, without notice to or participation by Respondent. The Board will not be disqualified from further action in this matter by virtue of its consideration of this Agreement.

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1 4. Respondent acknowledges there is current disciplinary action against his
2 license, that on December 1, 2010, an Accusation was filed against him and on
3 January 5, 2012, a Decision was rendered wherein his license was revoked, with the
4 revocation stayed, and placed on 35 months probation with various standard terms and
5 conditions.

6 5. The current disciplinary action provides in pertinent part, "Following the
7 effective date of this Decision, if Respondent ceases practicing due to retirement, health
8 reasons, or is otherwise unable to satisfy the terms and conditions of probation,
9 Respondent may request voluntary surrender of Respondent's license." (Condition #14).

10 6. Upon acceptance of the Agreement by the Board, Respondent understands
11 he will no longer be permitted to practice as a physician and surgeon in California, and
12 also agrees to surrender his wallet certificate, wall license and D.E.A. Certificate(s).

13 7. Respondent hereby represents that he does not intend to seek relicensure or
14 reinstatement as a physician and surgeon. Respondent fully understands and agrees,
15 however, that if Respondent ever files an application for relicensure or reinstatement in the
16 State of California, the Board shall treat it as a Petition for Reinstatement of a revoked
17 license in effect at the time the Petition is filed. In addition, any Medical Board
18 Investigation Report(s), including all referenced documents and other exhibits, upon which
19 the Board is predicated, and any such Investigation Report(s), attachments, and other
20 exhibits, that may be generated subsequent to the filing of this Agreement for Surrender of
21 License; shall be admissible as direct evidence, and any time-based defenses, such as
22 laches or any applicable statute of limitations, shall be waived when the Board determines
23 whether to grant or deny the Petition.
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ACCEPTANCE

1
2 I, EDGARDO GRACIA-OLEA, M.D., have carefully read the above Agreement and
3 enter into it freely and voluntarily, with the optional advice of counsel, and with full
4 knowledge of its force and effect, do hereby surrender Physician's and Surgeon's
5 Certificate No. A 33843, to the Medical Board of California for its acceptance. By signing
6 this Agreement for Surrender of License, I recognize that upon its formal acceptance by
7 the Board, I will lose all rights and privileges to practice as a Physician and Surgeon in the
8 State of California and that I have delivered to the Board my wallet certificate and wall
9 license.

10 Edgardo Gracia-Olea
11 EDGARDO GRACIA-OLEA, M.D.,

5/29/13
Date

13 Heather Gracia
14 Attorney or Witness

5/29/13
Date

15 A. Renee Threadgill
16 A. RENEE THREADGILL
17 Chief of Enforcement
18 Medical Board of California

6/5/2013
Date

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

In the Matter of the Accusation Against:)	
)	
EDGARDO GRACIA-OLEA, MD)	MBC File # 10-2009-198868
)	
Physician's & Surgeon's)	
Certificate No. A 33843)	
)	
<u>Respondent.</u>)	

ORDER CORRECTING CLERICAL ERROR IN DECISION

The Medical Board of California, having received an application submitted pursuant to section 11518.5 of the Government Code, to correct a typographical error in the previously adopted Stipulated Settlement and Disciplinary Order (Decision) regarding the above captioned matter, and having received no objection from Respondent, hereby makes and enters the following correction:

Term and Condition Number 1 of the Decision is amended to read:

"1. EDUCATION COURSE 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 20 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 of knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. 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 45 hours of CME of which 20 hours were in satisfaction of this condition."

IT IS SO ORDERED December 23, 2011.

MEDICAL BOARD OF CALIFORNIA



Shelton Duruisseau, Ph.D, Chair
Panel A

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

In the Matter of the Accusation)
Against:)
)
)
EDGARDO GRACIA-OLEA, M.D.) Case No. 10-2009-198868
)
Physician's and Surgeon's)
Certificate No. A 33843)
)
Respondent)
_____)

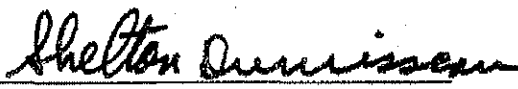
DECISION

The attached Proposed Stipulation 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 5, 2012.

IT IS SO ORDERED: December 6, 2011.

MEDICAL BOARD OF CALIFORNIA


Shelton Duruisseau, Ph.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS
Deputy Attorney General
4 State Bar No. 202766
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5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2093
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 EDGARDO GRACIA-OLEA, M.D.
14 480 Fourth Avenue, Suite 404
Chula Vista, CA 91910

15 Physician's and Surgeon's Certificate
16 No. A 33843,

17 Respondent.

Case No. 10-2009-198868

OAH No. 2011010675

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 **PARTIES**

21 1. Linda K. Whitney (hereinafter "complainant") is the Executive Director
22 of the Medical Board of California and is represented herein by Kamala D. Harris, Attorney
23 General of the State of California, by Matthew M. Davis, Deputy Attorney General.

24 2. Respondent Edgardo Gracia-Olea, M.D. (hereinafter "respondent"), is
25 represented in this proceeding by attorney Robert Frank, Esq., whose address is 1010 Second
26 Ave., Suite 2500, San Diego, CA 92101.

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1 JURISDICTION

2 3. On or about May 29, 1979, the Medical Board of California (Board)
3 issued Physician's and Surgeon's Certificate No. A 33843 to respondent. The Physician's and
4 Surgeon's Certificate was in full force and effect at all times relevant to the charges and
5 allegations in Accusation No. 10-2009-198868 and will expire on January 31, 2013, unless
6 renewed.

7 4. On December 1, 2010, Complainant Linda K. Whitney, in her
8 official capacity as the Executive Director of the Board, filed Accusation No. 10-2009-198868
9 against respondent. On December 1, 2010, respondent was served with a true and correct
10 copy of Accusation No. 10-2009-198868, together with true and correct copies of all other
11 statutorily required documents, at his address of record then on file with the Board: 480 Fourth
12 Ave., Suite 404, Chula Vista, CA 91910. On or about December 17, 2010, respondent filed a
13 Notice of Defense and requested a hearing on the charges and allegations contained in Accusation
14 No. 10-2009-198868. A true and correct copy of Accusation No. 10-2009-198868 is attached
15 hereto as Attachment "A" and incorporated by reference as if fully set forth herein.

16 ADVISEMENT AND WAIVERS

17 5. Respondent has carefully read, fully discussed with counsel, and
18 understands the charges and allegations in Accusation No. 10-2009-198868. Respondent also has
19 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
20 Settlement and Disciplinary Order.

21 6. Respondent is fully aware of his legal rights in this matter, including the
22 right to a hearing on the charges and allegations in Accusation No. 10-2009-198868; the right to
23 confront and cross-examine the witnesses against him; the right to present evidence and to testify
24 on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses
25 and the production of documents; the right to reconsideration and court review of an adverse
26 decision; and all other rights accorded by the California Administrative Procedure Act, the
27 California Code of Civil Procedure and other applicable laws, having been fully advised of same
28 by his attorney of record, Robert Frank, Esq.

1 7. Respondent, having the benefit of counsel, voluntarily, knowingly, and
2 intelligently waives and gives up each and every right set forth above.

3 CULPABILITY

4 8. Respondent does not contest that, at an administrative hearing, complainant
5 could establish a *prima facie* case with respect to the charges and allegations contained in
6 Accusation No. 10-2009-198868, a true and correct copy of which is attached hereto as
7 Attachment "A," and that he has thereby subjected his Physician's and Surgeon's Certificate No.
8 A 33843 to disciplinary action. Respondent further agrees to be bound by the Board's imposition
9 of discipline as set forth in the Disciplinary Order below.

10 9. Respondent agrees that if he ever petitions for early termination or
11 modification of probation, or if an accusation and/or petition to revoke probation is filed against
12 him before the Medical Board of California, all of the charges and allegations contained in
13 Accusation No. 10-2009-198868 shall be deemed true, correct and fully admitted by respondent
14 for purposes of any such proceeding or any other licensing proceeding involving respondent in
15 the State of California.

16 CONTINGENCY

17 10. The parties agree that this Stipulated Settlement and Disciplinary Order
18 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
19 the Board shall have a reasonable period of time in which to consider and act on this Stipulated
20 Settlement and Disciplinary Order after receiving it.

21 11. The parties agree that this Stipulated Settlement and Disciplinary Order
22 shall be null and void and not binding upon the parties unless approved and adopted by the Board,
23 except for this paragraph, which shall remain in full force and effect. Respondent fully
24 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
25 Settlement and Disciplinary Order, the Board may receive oral and written communications from
26 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall
27 not disqualify the Board, any member thereof, and/or any other person from future participation
28 in this or any other matter affecting or involving respondent. In the event that the Board, in its

1 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the
2 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
3 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
4 hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and
5 Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member
6 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
7 Settlement and Disciplinary Order or of any matter or matters related hereto.

8 ADDITIONAL PROVISIONS

9 12. This Stipulated Settlement and Disciplinary Order is intended by the
10 parties herein to be an integrated writing representing the complete, final and exclusive
11 embodiment of the agreements of the parties in the above-entitled matter.

12 13. The parties agree that facsimile copies of this Stipulated Settlement and
13 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original
14 documents and signatures and, further, that facsimile copies and signatures shall have the same
15 force and effect as originals.

16 14. In consideration of the foregoing admissions and stipulations, the parties
17 agree the Board may, without further notice to or opportunity to be heard by respondent, issue
18 and enter the following Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No.
21 A 33843 issued to Respondent Edgardo Gracia-Olea, M.D. (respondent) is revoked. However,
22 the revocation is stayed and respondent is placed on probation for thirty-five (35) months from
23 the effective date of this Decision on the following terms and conditions.

24 1. EDUCATION COURSE Within 60 calendar days of the effective date of
25 this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its
26 designee for its prior approval educational program(s) or course(s) which shall not be less than 20
27 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed
28 at correcting any areas of deficient practice or knowledge and shall be Category I certified,

1 limited to classroom, conference, or seminar settings. The educational program(s) or course(s)
2 shall be at respondent's expense and shall be in addition to the Continuing Medical Education
3 (CME) requirements for renewal of licensure. Following the completion of each course, the
4 Board or its designee may administer an examination to test respondent's knowledge of the
5 course. Respondent shall provide proof of attendance for 65 hours of CME of which 20 hours
6 were in satisfaction of this condition.

7 2. MEDICAL RECORDS KEEPING COURSE Within 60 calendar
8 days of the effective date of this decision, respondent shall enroll in a course in medical record
9 keeping, at respondent's expense, approved in advance by the Board or its designee. Failure to
10 successfully complete the course during the first 6 months of probation is a violation of probation.
11 A medical record keeping course taken after the acts that gave rise to the charges in the
12 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
13 or its designee, be accepted towards the fulfillment of this condition if the course would have
14 been approved by the Board or its designee had the course been taken after the effective date of
15 this Decision.

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

19 3. CLINICAL TRAINING PROGRAM Within 60 calendar days of the
20 effective date of this Decision, respondent shall enroll in a clinical training or educational
21 program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered
22 at the University of California - San Diego School of Medicine ("Program").

23 The Program shall consist of a Comprehensive Assessment program comprised of
24 a two-day assessment of respondent's physical and mental health; basic clinical and
25 communication skills common to all clinicians; and medical knowledge, skill and judgment
26 pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of
27 clinical education in the area of practice in which respondent was alleged to be deficient and
28 which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any

1 other information that the Board or its designee deems relevant. Respondent shall pay all
2 expenses associated with the clinical training program.

3 Based on respondent's performance and test results in the assessment and clinical
4 education, the Program will advise the Board or its designee of its recommendation(s) for the
5 scope and length of any additional educational or clinical training, treatment for any medical
6 condition, treatment for any psychological condition, or anything else affecting respondent's
7 practice of medicine. Respondent shall comply with Program recommendations.

8 At the completion of any additional educational or clinical training, respondent
9 shall submit to and pass an examination. The Program's determination whether or not respondent
10 passed the examination or successfully completed the Program shall be binding.

11 Respondent shall complete the Program not later than six months after respondent's initial
12 enrollment unless the Board or its designee agrees in writing to a later time for completion.

13 Failure to participate in and complete successfully all phases of the clinical
14 training program outlined above is a violation of probation.

15 4. NOTIFICATION Prior to engaging in the practice of medicine, the
16 respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the
17 Chief Executive Officer at every hospital where privileges or membership are extended to
18 respondent, at any other facility where respondent engages in the practice of medicine, including
19 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
20 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
21 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
22 days.

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

25 5. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
26 respondent is prohibited from supervising physician assistants. This term and condition of
27 probation shall not apply as long as respondent works in a hospital setting as an emergency room
28 physician, however, it shall apply if respondent works in any other setting.

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

4 7. QUARTERLY DECLARATIONS Respondent shall submit quarterly
5 declarations under penalty of perjury on forms provided by the Board, stating whether there has
6 been compliance with all the conditions of probation. Respondent shall submit quarterly
7 declarations not later than 10 calendar days after the end of the preceding quarter.

8 8. PROBATION UNIT COMPLIANCE Respondent shall comply with
9 the Board's probation unit. Respondent shall, at all times, keep the Board informed of
10 respondent's business and residence addresses. Changes of such addresses shall be immediately
11 communicated in writing to the Board or its designee. Under no circumstances shall a post office
12 box serve as an address of record, except as allowed by Business and Professions Code section
13 2021(b).

14 Respondent shall not engage in the practice of medicine in respondent's place of
15 residence. Respondent shall maintain a current and renewed California physician's and surgeon's
16 license.

17 Respondent shall immediately inform the Board, or its designee, in writing, of
18 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
19 more than 30 calendar days.

20 9. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE Respondent
21 shall be available in person for interviews either at respondent's place of business or at the
22 probation unit office, with the Board or its designee, upon request at various intervals, and either
23 with or without prior notice throughout the term of probation.

24 10. RESIDING OR PRACTICING OUT-OF-STATE In the event
25 respondent should leave the State of California to reside or to practice, respondent shall notify the
26 Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-
27 practice is defined as any period of time exceeding 30 calendar days in which respondent is not
28 engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions

1 Code.

2 All time spent in an intensive training program outside the State of California
3 which has been approved by the Board or its designee shall be considered as time spent in the
4 practice of medicine within the State. A Board-ordered suspension of practice shall not be
5 considered as a period of non-practice. Periods of temporary or permanent residence or practice
6 outside California will not apply to the reduction of the probationary term. Periods of temporary
7 or permanent residence or practice outside California will relieve respondent of the responsibility
8 to comply with the probationary terms and conditions with the exception of this condition and the
9 following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and
10 Cost Recovery.

11 Respondent's license shall be automatically cancelled if respondent's periods of
12 temporary or permanent residence or practice outside California total two years. However,
13 respondent's license shall not be cancelled as long as respondent is residing and practicing
14 medicine in another state of the United States and is on active probation with the medical
15 licensing authority of that state, in which case the two year period shall begin on the date
16 probation is completed or terminated in that state.

17 11. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

18 In the event respondent resides in the State of California and for any reason
19 respondent stops practicing medicine in California, respondent shall notify the Board or its
20 designee in writing within 30 calendar days prior to the dates of non-practice and return to
21 practice. Any period of non-practice within California, as defined in this condition, will not apply
22 to the reduction of the probationary term and does not relieve respondent of the responsibility to
23 comply with the terms and conditions of probation. Non-practice is defined as any period of time
24 exceeding 30 calendar days in which respondent is not engaging in any activities defined in
25 sections 2051 and 2052 of the Business and Professions Code.

26 All time spent in an intensive training program which has been approved by the
27 Board or its designee shall be considered time spent in the practice of medicine. For purposes of
28 this condition, non-practice due to a Board-ordered suspension or in compliance with any other

1 condition of probation, shall not be considered a period of non-practice.

2 Respondent's license shall be automatically cancelled if respondent resides in
3 California and for a total of two years, fails to engage in California in any of the activities
4 described in Business and Professions Code sections 2051 and 2052.

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

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

16 14. LICENSE SURRENDER Following the effective date of this
17 Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable
18 to satisfy the terms and conditions of probation, respondent may request the voluntary surrender
19 of respondent's license. The Board reserves the right to evaluate respondent's request and to
20 exercise its discretion whether or not to grant the request, or to take any other action deemed
21 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
22 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
23 Board or its designee and respondent shall no longer practice medicine. Respondent will no
24 longer be subject to the terms and conditions of probation and the surrender of respondent's
25 license shall be deemed disciplinary action. If respondent reapplies for a medical license, the
26 application shall be treated as a petition for reinstatement of a revoked certificate.

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15. 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. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I, Edgardo Gracia-Olea, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. A 33843. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon acceptance by the Board, my Physician's and Surgeon's Certificate No. A 33843 will be revoked, with the revocation stayed, and I shall be placed on probation and required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set for above shall constitute unprofessional conduct, will subject to my Physician's and Surgeon's Certificate No. A 48233 to further disciplinary action and, in addition, that the Board, after giving me notice and opportunity to be heard, may carry out the disciplinary order that was stayed, i.e., revocation of my Physician's and Surgeon's Certificate No. A 33843.

DATED: 9-23-2011 Edgardo Gracia-Olea
EDGARDO GRACIA-OLEA, M.D.
Respondent

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I have read and fully discussed with Respondent EDGARDO GRACIA-OLEA, 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: 10-6-11



ROBERT FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 10/7/11

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General


MATTHEW M. DAVIS
Deputy Attorney General
Attorneys for Complainant

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Attachment "A"

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EDMUND G. BROWN JR.
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

EDGARDO GRACIA-OLEA, M.D.
480 Fourth Avenue, Suite 404
Chula Vista, CA 91910

Physician's and Surgeon's Certificate
No. A 33843,

Respondent.

Case No. 10-2009-198868

ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about May 29, 1979, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 33843 to Edgardo Gracia-Olea, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Declaratory 10/1/2011*
BY *Walter Koppert* - Analyst

JURISDICTION

1
2 3. This Accusation is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 2227 of the Code states:

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

11 “(1) Have his or her license revoked upon order of the division.

12 “(2) Have his or her right to practice suspended for a period not to exceed
13 one year upon order of the division.

14 “(3) Be placed on probation and be required to pay the costs of probation
15 monitoring upon order of the division.

16 “(4) Be publicly reprimanded by the division.

17 “(5) Have any other action taken in relation to discipline as part of an
18 order of probation, as the division or an administrative law judge may deem
19 proper.

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

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FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

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3 7. Respondent has subjected his Physician's and Surgeon's Certificate
4 No. A 33843 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
5 subdivision subdivision (c), in that he committed repeated negligent acts in his care and treatment
6 of patient K.G., as more particularly alleged hereinafter:

7 8. On or about April 14, 2008, patient K.G., a fifty-seven year old woman,
8 came under the care and treatment of respondent for treatment of an infiltrating ductal carcinoma.
9 Respondent's notes for patient K.G.'s initial visit do not note whether the lesion was palpable nor
10 are there notes that other management options were discussed with K.G. Respondent further
11 failed to note whether the possibility of needle localization or the risks of the proposed left
12 sentinel node biopsy and left partial mastectomy were discussed with patient K.G.

13 9. On or about April 24, 2008, respondent performed a left sentinel node
14 biopsy and subsequent left partial mastectomy on patient K.G. Respondent did not order a
15 preoperative radiograph to localize the lesion. Respondent's notes do not mention that the
16 specimen removed was sent for radiologic evaluation nor is there a report of a specimen x-ray.

17 10. On or about April 29, 2008, respondent received a pathology report on the
18 tissue sample taken from patient K.G. The report confirmed a malignancy in the sentinel lymph
19 node. The report further stated that the sample was being sent for radiographical imaging because
20 the initial radiographic images of the sample did not identify the surgical clip. The pathology
21 report also stated respondent would re-examine patient K.G. by mammography in order to
22 attempt to locate the surgical clip.

23 11. On or about May 1, 2008, respondent saw patient for a postoperative
24 appointment. Respondent documented the need to repeat the mammogram and also for possible
25 left breast surgery. Patient K.G. was advised to return in 10 days to schedule mammography.

26 12. On or about May 12, 2008, respondent saw patient K.G. for another follow
27 up appointment. Respondent failed to note the need for a follow up mammogram or the concern
28 that the primary lesion (surgical clip) was not found in the tissue sample sent to pathology.

1 subdivision subdivision (a), in that he violated provisions of the Medical Practice Act in his care
2 and treatment of patient K.G., as more particularly alleged in Paragraphs 8 through 16, which are
3 hereby incorporated by reference as if fully set forth herein.

4 PRAYER

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

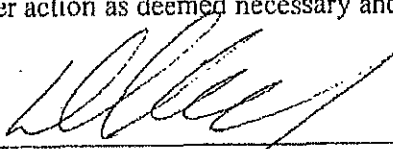
7 1. Revoking or suspending Physician's and Surgeon's Certificate Number
8 A 33843, issued to respondent Edgardo Gracia-Olea, M.D.;

9 2. Revoking, suspending or denying approval of respondent Edgardo Gracia-
10 Olea, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code:

11 3. Ordering respondent Edgardo Gracia-Olea, M.D. to pay the Medical Board
12 of California, if placed on probation, the costs of probation monitoring; and

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

14 DATED: December 1, 2010

15 
16 LINDA K. WHITNEY
17 Executive Director
18 Medical Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant
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