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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

FILED

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

September 2011 Grand Jury

12	UNITED STATES OF AMERICA,	)	No. SA CR 12-11(A)-CJC
13	Plaintiff,	)	<u>F I R S T</u>
14	v.	)	<u>S U P E R S E D I N G</u>
		)	<u>I N D I C T M E N T</u>
15	JULIO GABRIEL DIAZ,	)	[21 U.S.C. § 841(a)(1): Distribution
16	Defendant.	)	and Dispensing of a Controlled
17		)	Substance; 21 U.S.C. § 859:
18		)	Distribution of a Controlled
19		)	Substance to Person Under Twenty-One
		)	Years of Age; 21 U.S.C. § 853(a):
		)	Criminal Forfeiture of Property;
		)	18 U.S.C. § 2(b): Causing an Act to
		)	Be Done]

The Grand Jury charges:

COUNTS ONE THROUGH TWENTY-SEVEN

[21 U.S.C. §§ 841(a)(1), (b)(1)(C); 18 U.S.C. § 2(b)]

1. On or about the following dates, in Santa Barbara and Orange Counties, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and

1 intentionally distributed and dispensed; and caused the  
 2 intentional distribution and dispensing of, the following pills  
 3 containing a detectable amount of oxycodone, a Schedule II  
 4 narcotic drug controlled substance, to the following persons:

Count	Date	Number of Pills	Person
1	01/27/10	180	C.S.
2	03/04/10	360	T.R.
3	03/18/10	360	T.R.
4	03/18/10	30	T.R.
5	03/31/10	180	T.R.
6	03/31/10	30	T.R.
7	04/02/09	180	T.R.
8	05/15/10	300	A.B.
9	06/11/10	150	C.S.
10	06/11/10	180	C.S.
11	08/03/10	120	B.D.
12	08/03/10	120	B.D.
13	08/17/10	120	R.W.
14	08/17/10	120	R.W.
15	08/18/10	150	B.D.
16	08/20/10	120	B.D.
17	08/23/10	120	B.D.
18	10/06/10	400	M.T.
19	10/12/10	180	K.L.
20	10/22/10	400	M.T.
21	11/11/10	260	A.M.
22	11/11/10	60	A.M.
23	11/15/10	30	C.A.
24	11/16/10	240	C.A.
25	12/09/10	180	A.M.
26	12/10/10	180	A.M.

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Count	Date	Number of Pills	Person
27	07/25/11	180	M.L.

## COUNTS TWENTY-EIGHT THROUGH THIRTY-SEVEN

[21 U.S.C. §§ 841(a)(1), (b)(1)(C); 18 U.S.C. § 2(b)]

2. On or about the following dates, in Santa Barbara and Orange Counties, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following pills containing a detectable amount of methadone, a Schedule II narcotic drug controlled substance, to the following persons:

Count	Date	Number of Pills	Person
28	01/29/10	120	C.S.
29	05/10/10	120	A.B.
30	05/17/10	180	A.B.
31	06/25/10	120	C.S.
32	10/06/10	240	M.T.
33	10/12/10	240	K.L.
34	10/22/10	240	M.T.
35	11/11/10	120	A.M.
36	11/15/10	60	C.A.
37	12/10/10	120	A.M.

## COUNTS THIRTY-EIGHT THROUGH FORTY-FIVE

[21 U.S.C. §§ 841(a)(1), (b)(1)(C); 18 U.S.C. § 2(b)]

3. On or about the following dates, in Santa Barbara County, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following pills containing a detectable amount of hydromorphone, a Schedule II narcotic drug controlled substance, to the following persons:

Count	Date	Number of Pills	Person
38	03/04/10	60	T.R.
39	06/11/10	150	C.S.
40	10/12/10	120	K.L.
41	11/11/10	260	A.M.
42	11/11/10	60	A.M.
43	12/09/10	180	A.M.
44	12/10/10	180	A.M.
45	07/25/11	240	M.L.

## COUNTS FORTY-SIX THROUGH FIFTY-SIX

[21 U.S.C. §§ 841(a)(1), (b)(1)(C); 18 U.S.C. § 2(b)]

4. On or about the following dates, in Santa Barbara County, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following lozenges/troches and patches containing a detectable amount of fentanyl, a Schedule II narcotic drug controlled substance, to the following persons:

Count	Date	Number of Doses	Person
46	05/05/10	30	A.B.
47	05/14/10	60	A.B.
48	05/15/10	10	A.B.
49	05/21/10	60	A.B.
50	10/05/10	120	M.T.
51	10/11/10	120	M.T.
52	10/15/10	120	M.T.
53	10/21/10	120	M.T.
54	10/27/10	120	M.T.
55	11/12/10	30	A.M.
56	07/25/11	15	M.L.

## COUNTS FIFTY-SEVEN THROUGH SEVENTY

[21 U.S.C. §§ 841(a)(1), (b)(1)(E); 18 U.S.C. § 2(b)]

5. On or about the following dates, in Santa Barbara County, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following pills containing a detectable amount of hydrocodone, a Schedule III narcotic drug controlled substance, to the following persons:

Count	Date	Number of Pills	Person
57	03/01/10	200	T.R.
58	03/06/10	280	T.R.
59	03/10/10	240	T.R.
60	03/24/10	240	T.R.
61	03/29/10	200	T.R.
62	08/01/10	240	B.D.
63	09/03/10	240	R.W.
64	10/12/10	240	K.L.
65	10/15/10	180	M.T.
66	10/18/10	240	K.L.
67	11/15/10	240	C.A.
68	07/06/11	240	M.L.
69	07/25/11	240	M.L.
70	07/29/11	240	M.L.

## COUNTS SEVENTY-ONE THROUGH EIGHTY-THREE

[21 U.S.C. §§ 841(a)(1), (b)(2); 18 U.S.C. § 2(b)]

6. On or about the following dates, in Santa Barbara County, within the Central District of California, defendant JULIO GABRIEL DIAZ, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following pills containing a detectable amount of alprazolam, a Schedule IV controlled substance, to the following persons:

Count	Date	Number of Pills	Person
71	05/11/10	100	A.B.
72	06/08/10	100	C.S.
73	08/17/10	60	R.W.
74	10/04/10	100	K.L.
75	10/12/10	100	K.L.
76	10/15/10	100	M.T.
77	11/15/10	45	C.A.
78	11/17/10	120	A.M.
79	11/22/10	45	C.A.
80	12/02/10	100	S.G.
81	12/10/10	120	A.M.
82	07/23/11	60	M.L.
83	07/25/11	90	M.L.

## COUNTS EIGHTY-FOUR THROUGH EIGHTY-EIGHT

[21 U.S.C. §§ 841(a)(1), (b)(1)(C), (b)(1)(E), (b)(2); 21 U.S.C. § 859; 18 U.S.C. § 2(b)]

7. On or about the following dates, in Santa Barbara County, within the Central District of California, defendant JULIO GABRIEL DIAZ, then at least eighteen years of age and a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following pills containing a detectable amount of the following Schedule II, III, and IV controlled substances to the following person who was then under twenty-one years of age:

Count	Date	Controlled Substance	Number of Pills	Person	Age
84	11/25/08	Oxycodone	60	C.S.	19
85	11/25/08	Hydromorphone	90	C.S.	19
86	11/25/08	Alprazolam	60	C.S.	19
87	04/20/09	Alprazolam	100	C.S.	19
88	09/10/09	Oxycodone	180	C.S.	20

FORFEITURE NOTICE

[21 U.S.C. § 853(a)]

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2  
3 8. The allegations contained in Counts One through Eighty-  
4 Eight of this First Superseding Indictment are hereby repeated,  
5 realleged, and incorporated by reference herein as though fully  
6 set forth at length for the purpose of alleging criminal  
7 forfeiture pursuant to the provisions of Title 21, United States  
8 Code, Section 853. Pursuant to Fed. R. Crim. P. 32.2 and Title  
9 21, United States Code, Section 853, defendant JULIO GABRIEL  
10 DIAZ, if convicted of one or more offenses charged in Counts One  
11 through Eighty-Eight of the First Superseding Indictment, shall  
12 forfeit to the United States of America the following property:

- 13 a. All right, title, and interest in --
- 14 i. any and all property constituting, or derived
- 15 from, any proceeds obtained, directly or
- 16 indirectly, as a result of any of the
- 17 offenses described in Counts One through
- 18 Eighty-Eight; and
- 19 ii. any property, real or personal, used, or
- 20 intended to be used, in any manner or part,
- 21 to commit, or to facilitate the commission
- 22 of, any of the offenses described in Counts
- 23 One through Eighty-Eight;
- 24 b. A sum of money equal to the total value of the
- 25 property described in paragraph 8(a).

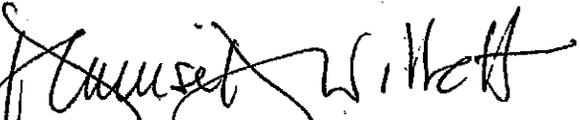
26 9. Pursuant to Title 21, United States Code, Section  
27 853(p), defendant DIAZ shall forfeit substitute property, up to  
28 the value of the total amount described in paragraph 8(a), if, as

1 the result of any act or omission of said defendant, said  
2 property, or any portion thereof, cannot be located upon the  
3 exercise of due diligence; has been transferred, sold to, or  
4 deposited with a third party; has been placed beyond the  
5 jurisdiction of the Court; has been substantially diminished in  
6 value; or has been commingled with other property that cannot be  
7 divided without difficulty.

8  
9 A TRUE BILL

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11 \_\_\_\_\_  
12 Foreperson

13 ANDRÉ BIROTTE JR.  
14 United States Attorney

15   
16 ROBERT E. DUGDALE  
17 Assistant United States Attorney  
18 Chief, Criminal Division

19 DENNISE D. WILLETT  
20 Assistant United States Attorney  
21 Chief, Santa Ana Branch Office

22 DOUGLAS F. McCORMICK  
23 Assistant United States Attorney  
24 Deputy Chief, Santa Ana Branch Office

25 ANN LUOTTO WOLF  
26 Assistant United States Attorney  
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FILED - SOUTHERN DIVISION  
CLERK, U.S. DISTRICT COURT  
**AUG 28 2015**  
CENTRAL DISTRICT OF CALIFORNIA  
BY MKU DEPUTY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO GABRIEL DIAZ,

Defendant.

Case No. SA CR 12-11 (A) -CJC

SPECIAL VERDICT FORM

COUNT ONE

1  
2 1. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing oxycodone to C.S. on or about  
7 January 27, 2010, as charged in Count One of the First Superseding  
8 Indictment.

COUNT TWO

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10  
11 2. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing oxycodone to T.R. on or about March 4,  
16 2010, as charged in Count Two of the First Superseding Indictment.

COUNT THREE

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19 3. We, the jury in the above-captioned cause, unanimously  
20 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

21  GUILTY  
22  NOT GUILTY

23 of distributing or dispensing oxycodone to T.R. on or about  
24 March 18, 2010, as charged in Count Three of the First Superseding  
25 Indictment.

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COUNT FOUR

1  
2 4. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing oxycodone to T.R. on or about  
7 March 18, 2010, as charged in Count Four of the First Superseding  
8 Indictment.

COUNT FIVE

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10  
11 5. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing oxycodone to T.R. on or about  
16 March 31, 2010, as charged in Count Five of the First Superseding  
17 Indictment.

COUNT SIX

18  
19  
20 6. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing oxycodone to T.R. on or about  
25 March 31, 2010, as charged in Count Six of the First Superseding  
26 Indictment.

COUNT SEVEN

1  
2 7. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing oxycodone to T.R. on or about  
7 April 2, 2010, as charged in Count Seven of the First Superseding  
8 Indictment.

COUNT EIGHT

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11 8. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing oxycodone to A.B. on or about  
16 May 15, 2010, as charged in Count Eight of the First Superseding  
17 Indictment.

COUNT NINE

18  
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20 9. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing oxycodone to C.S. on or about  
25 June 11, 2010, as charged in Count Nine of the First Superseding  
26 Indictment.

COUNT TEN

1  
2 10. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing oxycodone to C.S. on or about  
7 June 11, 2010, as charged in Count Ten of the First Superseding  
8 Indictment.

9  
10 COUNT ELEVEN

11 11. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing oxycodone to B.D. on or about  
16 August 3, 2010, as charged in Count Eleven of the First Superseding  
17 Indictment.

18  
19 COUNT TWELVE

20 12. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing oxycodone to B.D. on or about  
25 August 3, 2010, as charged in Count Twelve of the First Superseding  
26 Indictment.

COUNT THIRTEEN

1  
2 13. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing oxycodone to R.W. on or about  
7 August 17, 2010, as charged in Count Thirteen of the First  
8 Superseding Indictment.

9  
10 COUNT FOURTEEN

11 14. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing oxycodone to R.W. on or about  
16 August 17, 2010, as charged in Count Fourteen of the First  
17 Superseding Indictment.

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COUNT FIFTEEN

15. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to B.D. on or about August 18, 2010, as charged in Count Fifteen of the First Superseding Indictment.

COUNT SIXTEEN

16. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to B.D. on or about August 20, 2010, as charged in Count Sixteen of the First Superseding Indictment.

COUNT SEVENTEEN

17. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to B.D. on or about August 23, 2010, as charged in Count Seventeen of the First Superseding Indictment.

COUNT EIGHTEEN

18. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing oxycodone to M.T. on or about October 6, 2010, as charged in Count Eighteen of the First Superseding Indictment.

COUNT NINETEEN

19. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing oxycodone to K.L. on or about October 12, 2010, as charged in Count Nineteen of the First Superseding Indictment.

COUNT TWENTY

20. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing oxycodone to M.T. on or about October 22, 2010, as charged in Count Twenty of the First Superseding Indictment.

COUNT TWENTY-ONE

1  
2 21. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing oxycodone to A.M. on or about  
7 November 11, 2010, as charged in Count Twenty-One of the First  
8 Superseding Indictment.

COUNT TWENTY-TWO

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11 22. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing oxycodone to A.M. on or about  
16 November 11, 2010, as charged in Count Twenty-Two of the First  
17 Superseding Indictment.

COUNT TWENTY-THREE

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19  
20 23. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing oxycodone to C.A. on or about  
25 November 15, 2010, as charged in Count Twenty-Three of the First  
26 Superseding Indictment.

COUNT TWENTY-FOUR

24. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to C.A. on or about November 16, 2010, as charged in Count Twenty-Four of the First Superseding Indictment.

COUNT TWENTY-FIVE

25. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to A.M. on or about December 9, 2010, as charged in Count Twenty-Five of the First Superseding Indictment.

COUNT TWENTY-SIX

26. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing oxycodone to A.M. on or about December 10, 2010, as charged in Count Twenty-Six of the First Superseding Indictment.

COUNT TWENTY-EIGHT

1  
2 28. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing methadone to C.S. on or about  
7 January 29, 2010, as charged in Count Twenty-Eight of the First  
8 Superseding Indictment.

9  
10 COUNT TWENTY-NINE

11 29. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing methadone to A.B. on or about  
16 May 10, 2010, as charged in Count Twenty-Nine of the First  
17 Superseding Indictment.

18  
19 COUNT THIRTY

20 30. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing methadone to A.B. on or about  
25 May 17, 2010, as charged in Count Thirty of the First Superseding  
26 Indictment.

COUNT THIRTY-ONE

1  
2 31. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing methadone to C.S. on or about  
7 June 25, 2010, as charged in Count Thirty-One of the First  
8 Superseding Indictment.

COUNT THIRTY-TWO

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10  
11 32. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing methadone to M.T. on or about  
16 October 6, 2010, as charged in Count Thirty-Two of the First  
17 Superseding Indictment.

COUNT THIRTY-THREE

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19  
20 33. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing methadone to K.L. on or about  
25 October 12, 2010, as charged in Count Thirty-Three of the First  
26 Superseding Indictment.

COUNT THIRTY-FOUR

1  
2 34. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing methadone to M.T. on or about  
7 October 22, 2010, as charged in Count Thirty-Four of the First  
8 Superseding Indictment.

9  
10 COUNT THIRTY-FIVE

11 35. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing methadone to A.M. on or about  
16 November 11, 2010, as charged in Count Thirty-Five of the First  
17 Superseding Indictment.

18 COUNT THIRTY-SIX

19 36. We, the jury in the above-captioned cause, unanimously  
20 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

21  GUILTY

22  NOT GUILTY

23 of distributing or dispensing methadone to C.A. on or about  
24 November 15, 2010, as charged in Count Thirty-Six of the First  
25 Superseding Indictment.

COUNT THIRTY-SEVEN

37. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing methadone to A.M. on or about December 10, 2010, as charged in Count Thirty-Seven of the First Superseding Indictment.

COUNT THIRTY-EIGHT

38. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydromorphone to T.R. on or about March 4, 2010, as charged in Count Thirty-Eight of the First Superseding Indictment.

COUNT THIRTY-NINE

39. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydromorphone to C.S. on or about June 11, 2010, as charged in Count Thirty-Nine of the First Superseding Indictment.

COUNT FORTY

1  
2 40. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing hydromorphone to K.L. on or about  
7 October 12, 2010, as charged in Count Forty of the First Superseding  
8 Indictment.

9  
10 COUNT FORTY-ONE

11 41. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing hydromorphone to A.M. on or about  
16 November 11, 2010, as charged in Count Forty-One of the First  
17 Superseding Indictment.

18  
19 COUNT FORTY-TWO

20 42. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing hydromorphone to A.M. on or about  
25 November 11, 2010, as charged in Count Forty-Two of the First  
26 Superseding Indictment.

COUNT FORTY-THREE

1  
2 43. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing hydromorphone to A.M. on or about  
7 December 9, 2010, as charged in Count Forty-Three of the First  
8 Superseding Indictment.

9  
10 COUNT FORTY-FOUR

11 44. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing hydromorphone to A.M. on or about  
16 December 10, 2010, as charged in Count Forty-Four of the First  
17 Superseding Indictment.

18  
19 COUNT FORTY-SIX

20 46. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing fentanyl to A.B. on or about  
25 May 5, 2010, as charged in Count Forty-Six of the First Superseding  
26 Indictment.

COUNT FORTY-SEVEN

47. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

X GUILTY  
   NOT GUILTY

of distributing or dispensing fentanyl to A.B. on or about May 14, 2010, as charged in Count Forty-Seven of the First Superseding Indictment.

COUNT FORTY-EIGHT

48. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

X GUILTY  
   NOT GUILTY

of distributing or dispensing fentanyl to A.B. on or about May 15, 2010, as charged in Count Forty-Eight of the First Superseding Indictment.

COUNT FORTY-NINE

49. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

X GUILTY  
   NOT GUILTY

of distributing or dispensing fentanyl to A.B. on or about May 21, 2010, as charged in Count Forty-Nine of the First Superseding Indictment.

COUNT FIFTY

1  
2 50. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing fentanyl to M.T. on or about  
7 October 5, 2010, as charged in Count Fifty of the First Superseding  
8 Indictment.

9  
10 COUNT FIFTY-ONE

11 51. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing fentanyl to M.T. on or about  
16 October 11, 2010, as charged in Count Fifty-One of the First  
17 Superseding Indictment.

18  
19 COUNT FIFTY-TWO

20 52. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing fentanyl to M.T. on or about  
25 October 15, 2010, as charged in Count Fifty-Two of the First  
26 Superseding Indictment.

COUNT FIFTY-THREE

53. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing fentanyl to M.T. on or about October 21, 2010, as charged in Count Fifty-Three of the First Superseding Indictment.

COUNT FIFTY-FOUR

54. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing fentanyl to M.T. on or about October 27, 2010, as charged in Count Fifty-Four of the First Superseding Indictment.

COUNT FIFTY-FIVE

55. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing fentanyl to A.M. on or about November 12, 2010, as charged in Count Fifty-Five of the First Superseding Indictment.

COUNT FIFTY-SEVEN

1  
2 57. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing hydrocodone to T.R. on or about  
7 March 1, 2010, as charged in Count Fifty-Seven of the First  
8 Superseding Indictment.

9  
10 COUNT FIFTY-EIGHT

11 58. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing hydrocodone to T.R. on or about  
16 March 6, 2010, as charged in Count Fifty-Eight of the First  
17 Superseding Indictment.

18  
19 COUNT FIFTY-NINE

20 59. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing hydrocodone to T.R. on or about  
25 March 10, 2010, as charged in Count Fifty-Nine of the First  
26 Superseding Indictment.

COUNT SIXTY

60. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing hydrocodone to T.R. on or about March 24, 2010, as charged in Count Sixty of the First Superseding Indictment.

COUNT SIXTY-ONE

61. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing hydrocodone to T.R. on or about March 29, 2010, as charged in Count Sixty-One of the First Superseding Indictment.

COUNT SIXTY-TWO

62. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY  
 NOT GUILTY

of distributing or dispensing hydrocodone to B.D. on or about August 1, 2010, as charged in Count Sixty-Two of the First Superseding Indictment.

COUNT SIXTY-THREE

63. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydrocodone to R.W. on or about September 3, 2010, as charged in Count Sixty-Three of the First Superseding Indictment.

COUNT SIXTY-FOUR

64. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydrocodone to K.L. on or about October 12, 2010, as charged in Count Sixty-Four of the First Superseding Indictment.

COUNT SIXTY-FIVE

65. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydrocodone to M.T. on or about October 15, 2010, as charged in Count Sixty-Five of the First Superseding Indictment.

COUNT SIXTY-SIX

66. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydrocodone to K.L. on or about October 18, 2010, as charged in Count Sixty-Six of the First Superseding Indictment.

COUNT SIXTY-SEVEN

67. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydrocodone to C.A. on or about November 15, 2010, as charged in Count Sixty-Seven of the First Superseding Indictment.

COUNT SEVENTY-ONE

71. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing alprazolam to A.B. on or about May 11, 2010, as charged in Count Seventy-One of the First Superseding Indictment.

COUNT SEVENTY-TWO

1  
2 72. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing alprazolam to C.S. on or about  
7 June 8, 2010, as charged in Count Seventy-Two of the First  
8 Superseding Indictment.

9  
10 COUNT SEVENTY-THREE

11 73. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing alprazolam to R.W. on or about  
16 August 17, 2010, as charged in Count Seventy-Three of the First  
17 Superseding Indictment.

18  
19 COUNT SEVENTY-FOUR

20 74. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing alprazolam to K.L. on or about  
25 October 4, 2010, as charged in Count Seventy-Four of the First  
26 Superseding Indictment.

COUNT SEVENTY-FIVE

1  
2 75. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing alprazolam to K.L. on or about  
7 October 12, 2010, as charged in Count Seventy-Five of the First  
8 Superseding Indictment.

9  
10 COUNT SEVENTY-SIX

11 76. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY

14  NOT GUILTY

15 of distributing or dispensing alprazolam to M.T. on or about  
16 October 15, 2010, as charged in Count Seventy-Six of the First  
17 Superseding Indictment.

18  
19 COUNT SEVENTY-SEVEN

20 77. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY

23  NOT GUILTY

24 of distributing or dispensing alprazolam to C.A. on or about  
25 November 15, 2010, as charged in Count Seventy-Seven of the First  
26 Superseding Indictment.

COUNT SEVENTY-EIGHT

1  
2 78. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing alprazolam to A.M. on or about  
7 November 17, 2010, as charged in Count Seventy-Eight of the First  
8 Superseding Indictment.

9  
10 COUNT SEVENTY-NINE

11 79. We, the jury in the above-captioned cause, unanimously  
12 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

13  GUILTY  
14  NOT GUILTY

15 of distributing or dispensing alprazolam to C.A. on or about  
16 November 22, 2010, as charged in Count Seventy-Nine of the First  
17 Superseding Indictment.

18  
19 COUNT EIGHTY-ONE

20 81. We, the jury in the above-captioned cause, unanimously  
21 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

22  GUILTY  
23  NOT GUILTY

24 of distributing or dispensing alprazolam to A.M. on or about  
25 December 10, 2010, as charged in Count Eighty-One of the First  
26 Superseding Indictment.

COUNT EIGHTY-FOUR

1  
2 84. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing oxycodone to C.S. on or about  
7 November 25, 2008, as charged in Count Eighty-Four of the First  
8 Superseding Indictment.

9  
10 If your answer is NOT GUILTY to question 84, skip question  
11 84(a) and 84(b), and proceed directly to question 85. If your  
12 answer is Guilty to question 84, proceed to question 84(a) and  
13 84(b).

14  
15 84(a). If you find defendant guilty as to Count Eighty-Four,  
16 then do you unanimously find beyond a reasonable doubt that C.S. was  
17 under twenty-one years of age when defendant JULIO GABRIEL DIAZ  
18 distributed oxycodone to C.S.?

19  YES

20  NO

21  
22 84(b). If you find defendant guilty as to Count Eighty-Four,  
23 then do you unanimously find beyond a reasonable doubt that  
24 defendant JULIO GABRIEL DIAZ was at least eighteen years of age at  
25 the time he distributed oxycodone to C.S.?

26  YES

27  NO.

28

COUNT EIGHTY-FIVE

85. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

GUILTY

NOT GUILTY

of distributing or dispensing hydromorphone to C.S. on or about November 25, 2008, as charged in Count Eighty-Five of the First Superseding Indictment.

If your answer is NOT GUILTY to question 85, skip question 85(a) and 85(b), and proceed directly to question 86. If your answer is Guilty to question 85, proceed to question 85(a) and 85(b).

85(a). If you find defendant guilty as to Count Eighty-Five, then do you unanimously find beyond a reasonable doubt that C.S. was under twenty-one years of age when defendant JULIO GABRIEL DIAZ distributed hydromorphone to C.S.?

YES

NO

85(b). If you find defendant guilty as to Count Eighty-Five, then do you unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ was at least eighteen years of age at the time he distributed hydromorphone to C.S.?

YES

NO

COUNT EIGHTY-SIX

1  
2 86. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

4  GUILTY

5  NOT GUILTY

6 of distributing or dispensing alprazolam to C.S. on or about  
7 November 25, 2008, as charged in Count Eighty-Six of the First  
8 Superseding Indictment.

9  
10 If your answer is NOT GUILTY to question 86, skip question  
11 86(a) and 86(b), and proceed directly to question 87. If your  
12 answer is Guilty to question 86, proceed to question 86(a) and  
13 86(b).

14  
15 86(a). If you find defendant guilty as to Count Eighty-Six,  
16 then do you unanimously find beyond a reasonable doubt that C.S. was  
17 under twenty-one years of age when defendant JULIO GABRIEL DIAZ  
18 distributed alprazolam to C.S.?

19  YES

20  NO

21  
22 86(b). If you find defendant guilty as to Count Eighty-Six,  
23 then do you unanimously find beyond a reasonable doubt that  
24 defendant JULIO GABRIEL DIAZ was at least eighteen years of age at  
25 the time he distributed alprazolam to C.S.?

26  YES

27  NO

COUNT EIGHTY-SEVEN

1  
2 87. We, the jury in the above-captioned cause, unanimously  
3 find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

- 4  GUILTY  
5  NOT GUILTY

6 of distributing or dispensing alprazolam to C.S. on or about  
7 April 20, 2009, as charged in Count Eighty-Seven of the First  
8 Superseding Indictment.

9  
10 If your answer is NOT GUILTY to question 87, skip question  
11 87(a) and 87(b), and proceed directly to question 88. If your  
12 answer is Guilty to question 87, proceed to question 87(a) and  
13 87(b).

14  
15 87(a). If you find defendant guilty as to Count Eighty-Seven,  
16 then do you unanimously find beyond a reasonable doubt that C.S. was  
17 under twenty-one years of age when defendant JULIO GABRIEL DIAZ  
18 distributed alprazolam to C.S.?

- 19  YES  
20  NO

21  
22 87(b). If you find defendant guilty as to Count Eighty-Seven,  
23 then do you unanimously find beyond a reasonable doubt that  
24 defendant JULIO GABRIEL DIAZ was at least eighteen years of age at  
25 the time he distributed alprazolam to C.S.?

- 26  YES  
27  NO

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COUNT EIGHTY-EIGHT

88. We, the jury in the above-captioned cause, unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ is:

- GUILTY
- NOT GUILTY

of distributing or dispensing oxycodone to C.S. on or about September 10, 2009, as charged in Count Eighty-Eight of the First Superseding Indictment.

If your answer is NOT GUILTY to question 88, skip question 88(a) and 88(b), and complete the verdict form. If your answer is Guilty to question 88, proceed to question 88(a) and 88(b).

88(a). If you find defendant guilty as to Count Eighty-Eight, then do you unanimously find beyond a reasonable doubt that C.S. was under twenty-one years of age when defendant JULIO GABRIEL DIAZ distributed oxycodone to C.S.?

- YES
- NO

///  
///

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88(b). If you find defendant guilty as to Count Eighty-Eight, then do you unanimously find beyond a reasonable doubt that defendant JULIO GABRIEL DIAZ was at least eighteen years of age at the time he distributed oxycodone to C.S.?

YES  
 NO

**REDACTED**

FOREPERSON OF THE JURY

DATED: 8/28/15, at Santa Ana, California.

1 KAMALA D. HARRIS  
Attorney General of California  
2 E. A. JONES III  
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6 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against,  
12 **OTERO JULIO GABRIEL DIAZ, M.D.**  
13 **510 North Milpas**  
14 **Santa Barbara, CA 93103-3137**  
15 **Physician's and Surgeon's Certificate No. A**  
16 **36932**  
17 Respondent.

Case No. 06-2010-209660

**DEFAULT DECISION**  
**AND ORDER**

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about March 7, 2012, Complainant Linda K. Whitney, in her official capacity  
20 as the Executive Director of the Medical Board of California, Department of Consumer Affairs,  
21 filed Accusation No. 06-2010-209660 against Otero Julio Gabriel Diaz, M.D. (Respondent)  
22 before the Medical Board of California.

23 2. On or about June 30, 1981, the Medical Board of California (Board) issued  
24 Physician's and Surgeon's Certificate No. A 36932 to Respondent. The Physician's and Surgeon's  
25 Certificate, which was in full force and effect at all times relevant to the charges brought herein,  
26 expired on August 31, 2012, and has not been renewed. Attached hereto as Exhibit A and  
27 incorporated herein is a Certification of Licensure.

28 3. On or about March 7, 2012, Kelly Montalbano, an employee of the Complainant  
Agency, served by Certified Mail a copy of the Accusation No. 06-2010-209660, Statement to  
Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 510  
2 North Milpas, Santa Barbara, California, 93103-3137. A copy of the Accusation, the related  
3 documents, and Declaration of Service are attached as exhibit B, and are incorporated herein by  
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

8 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
9 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
10 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
11 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

12 Respondent failed to file a Notice of Defense within 15 days after service upon him of the  
13 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 06-2010-  
14 209660.

15 6. California Government Code section 11520 states, in pertinent part:

16 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
17 agency may take action based upon the respondent's express admissions or upon other evidence  
18 and affidavits may be used as evidence without any notice to respondent."

19 7. Pursuant to its authority under Government Code section 11520, the Board finds  
20 Respondent is in default. The Board will take action without further hearing and, based on  
21 Respondent's express admissions by way of default and the evidence before it, contained in  
22 exhibits A, B and C, finds that the allegations in Accusation No. 06-2010-209660 are true.

#### 23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Otero Julio Gabriel Diaz, M.D.  
25 has subjected his Physician's and Surgeon's Certificate No. A 36932 to discipline.

26 2. A copy of the Accusation and the related documents and Declaration of Service are  
27 attached.

28 3. The agency has jurisdiction to adjudicate this case by default.



1 KAMALA D. HARRIS  
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6 *Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

11 **OTERO JULIO GABRIEL DIAZ, M.D.**  
12 **510 North Milpas Street**  
**Santa Barbara, CA 93103-3137**

13 **Physician's and Surgeon's Certificate No. A**  
**36932**

14 Respondent.

Case No. 06-2010-209660

**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 1981, the Medical Board of California issued Physician's and  
22 Surgeon's Certificate Number A 36932 to Otero Julio Gabriel Diaz, M.D. (Respondent). The  
23 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the  
24 charges brought herein and will expire on August 31, 2012, unless renewed.

25 **JURISDICTION**

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

1           4.     Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
4 action taken in relation to discipline as the Board deems proper.

5           5.     Section 2234 of the Code states:

6                 "The Division of Medical Quality<sup>1</sup>] shall take action against any licensee who is  
7 charged with unprofessional conduct. In addition to other provisions of this article,  
8 unprofessional conduct includes, but is not limited to, the following:

9                 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting  
10 the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the  
11 Medical Practice Act].

12                 "(b) Gross negligence.

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

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

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

23                 "(d) Incompetence.

24  
25                 <sup>1</sup> California Business and Professions Code section 2002, as amended and effective  
26 January 1, 2008, provides that, unless otherwise expressly provided, the term "Board" as used in  
27 the State Medical Practice Act (Bus. & Prof. §§ 2000 et. seq.) means the "Medical Board of  
28 California," and references to the "Division of Medical Quality" and "Division of Licensing" in  
the Act or any other provision of law shall be deemed to refer to the Board.

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

3           "(f) Any action or conduct which would have warranted the denial of a certificate."

4           6. Section 2241.5 of the Code states:

5           "(a) A physician and surgeon may prescribe for, or dispense or administer to, a person  
6 under his or her treatment for a medical condition dangerous drugs or prescription  
7 controlled substances for the treatment of pain or a condition causing pain, including, but  
8 not limited to, intractable pain.

9           "(b) No physician and surgeon shall be subject to disciplinary action for prescribing,  
10 dispensing, or administering dangerous drugs or prescription controlled substances in  
11 accordance with this section.

12           "(c) This section shall not affect the power of the board to take any action described  
13 in Section 2227 against a physician and surgeon who does any of the following:

14           "(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence,  
15 repeated negligent acts, or incompetence.

16           "(2) Violates Section 2241 regarding treatment of an addict.

17           "(3) Violates Section 2242 regarding performing an appropriate prior examination  
18 and the existence of a medical indication for prescribing, dispensing, or furnishing  
19 dangerous drugs.

20           "(4) Violates Section 2242.1 regarding prescribing on the Internet.

21           "(5) Fails to keep complete and accurate records of purchases and disposals of  
22 substances listed in the California Uniform Controlled Substances Act (Division 10  
23 (commencing with Section 11000) of the Health and Safety Code) or controlled substances  
24 scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970  
25 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse  
26 Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or  
27 her purchases and disposals of these controlled substances or dangerous drugs, including  
28 the date of purchase, the date and records of the sale or disposal of the drugs by the

1 physician and surgeon, the name and address of the person receiving the drugs, and the  
2 reason for the disposal or the dispensing of the drugs to the person, and shall otherwise  
3 comply with all state recordkeeping requirements for controlled substances.

4 "(6) Writes false or fictitious prescriptions for controlled substances listed in the  
5 California Uniform Controlled Substances Act or scheduled in the federal Comprehensive  
6 Drug Abuse Prevention and Control Act of 1970.

7 "(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation  
8 of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section  
9 11210) of Division 10 of the Health and Safety Code.

10 "(d) A physician and surgeon shall exercise reasonable care in determining whether a  
11 particular patient or condition, or the complexity of a patient's treatment, including, but not  
12 limited to, a current or recent pattern of drug abuse, requires consultation with, or referral  
13 to, a more qualified specialist.

14 "(e) Nothing in this section shall prohibit the governing body of a hospital from  
15 taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05,  
16 809.4, and 809.5."

17 7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain  
18 adequate and accurate records relating to the provision of services to their patients constitutes  
19 unprofessional conduct."

20 8. Section 725 of the Code states:

21 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or  
22 administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic  
23 procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as  
24 determined by the standard of the community of licensees is unprofessional conduct for a  
25 physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor,  
26 optometrist, speech-language pathologist, or audiologist.

27 "(b) Any person who engages in repeated acts of clearly excessive prescribing or  
28 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a

1 fine of not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600),  
2 or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both  
3 that fine and imprisonment.

4 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or  
5 administering dangerous drugs or prescription controlled substances shall not be subject to  
6 disciplinary action or prosecution under this section.

7 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this  
8 section for treating intractable pain in compliance with Section 2241.5."

### 9 FIRST CAUSE FOR DISCIPLINE

#### 10 (Gross Negligence)

11 9. Respondent is subject to disciplinary action under section 2234, subdivision (b), of  
12 the Code in that Respondent was grossly negligent in the care and treatment of a patient. The  
13 circumstances are as follows:

14 A. On or about June 26, 2008, patient J.H. first presented to Respondent with a  
15 history of performing yoga and a 10 pound weight loss. The patient was noted to have  
16 suffered panic attacks but is "better now." No exam was performed nor was an initial  
17 assessment performed.

18 B. On or about February 20, 2009, patient J.H. saw Respondent with complaints of  
19 neck and shoulder pain. The treatment plan is not documented and the chart is illegible.  
20 Oxycontin<sup>2</sup> 80 mg #60 was prescribed. It was refilled on March 10, 2009, for #30 and on  
21 March 20, 2009, for #90.

22 C. On or about March 26, 2009, the patient was seen by Respondent with a  
23 complaint of a urinary tract infection (UTI).

24 D. On or about April 6, 2009, the chart notes indicate the patient was in a motor  
25 vehicle accident which caused neck and lumbar pain. Physical therapy was recommended.

26 <sup>2</sup> Oxycontin is the brand name for oxycodone, a Schedule II controlled substance under  
27 the California Health and Safety Code, section 11055, subdivision (b)(1)(N). Oxycodone is a  
28 dangerous drug per Business and Professions Code section 4022 and is indicated for severe pain.

1 A urine drug screen was performed which detected only prescribed medications.

2 Respondent prescribed Oxycontin 40 mg #180 and Soma<sup>3</sup> 350 mg #60.

3 E. On or about April 15, 2009, patient J.H. saw Respondent for complaints of neck  
4 pain and stiffness. Patient noted that she had seen a chiropractor. Respondent planned to  
5 change to oxycodone 30 mg and Oxycontin 40 mg before resuming Oxycontin 80 mg.  
6 There was no follow up regarding the physical therapy recommended. Oxycontin 80 mg  
7 #120 was prescribed on April 20, 2009, with refills on May 15, 2009, June 5, 2009, and  
8 July 17, 2009.

9 F. On or about May 15, 2009, patient J.H. saw Respondent for neck pain and right  
10 arm pain. Spinal x-rays were ordered. There was no follow-up regarding the physical  
11 therapy recommended. A urine drug screen was performed which detected only prescribed  
12 medications. Oxycodone 39 mg #120 was prescribed with refills on June 5, 2009, for #150  
13 and on July 17, 2009.

14 G. On or about June 5, 2009, Respondent saw patient J.H. for continued pain. The  
15 patient reported that she could do all activities at home and work. A urine drug screen was  
16 performed which detected only prescribed medications.

17 H. On or about June 18, 2009, patient J.H. returned to Respondent with complaints  
18 of anxiety and depression after breaking up with her boyfriend. Xanax<sup>4</sup> 2 mg #100 (with  
19 refills on August 17, 2009, and October 6, 2009) and Lexapro<sup>5</sup> were prescribed by  
20 Respondent and Respondent recommended that the patient be taken off work. On June 26,  
21

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22 <sup>3</sup> Soma is a brand name for carisoprodol, a Schedule IV controlled substance under the  
23 California Health and Safety Code, section 11057, subdivision (d)(17), and a dangerous drug  
within the meaning of Business and Professions Code section 4022. It is a muscle relaxant use to  
treat musculoskeletal injuries.

24 <sup>4</sup> Xanax is a brand name for alprazolam, a Schedule IV controlled substance under the  
25 California Health and Safety Code, section 11057, subdivision (d)(1), and a dangerous drug  
within the meaning of Business and Professions Codes section 4022. It is a depressant.

26 <sup>5</sup> Lexapro, a brand name for escitalopram, is not a scheduled drug, but is classified as a  
27 dangerous drug pursuant to Business and Professions Code section 4022. It is used to treat  
28 depression and generalized anxiety disorder (GAD), excessive worry and tension that disrupts  
daily life.

1 2009, a urine drug screen was performed which detected only prescribed medications.

2 I. On or about July 17, 2009, Respondent saw patient J.H. for complaints of low  
3 back pain. A urine drug screen was performed which detected only prescribed medications.  
4 The patient stated that she was exercising. Her medications were refilled.

5 J. On or about August 13, 2009, patient J.H. saw Respondent with complaints of  
6 severe head and neck pain and headache. A urine drug screen was performed which  
7 detected only prescribed medications. Oxycodone 30 mg #150 (with a refill on September  
8 11, 2009, for #120) and Oxycontin 80 mg #120 (which was refilled on September 11, 2009)  
9 were prescribed as was Ibuprofen<sup>6</sup> and Demerol.<sup>7</sup> Maxalt<sup>8</sup> was prescribed for headache.

10 K. On or about September 11, 2009, patient J.H. saw Respondent with complaints  
11 of pain. The patient noted she was no longer depressed. A urine drug screen was  
12 performed which detected only prescribed medications. Her medications were refilled.  
13 Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist or drug  
14 addiction specialist.

15 L. On or about October 6, 2009, patient J.H. returned to Respondent with  
16 complaints of worsened pain in her joints. A failed attempt to reduce Oxycontin was  
17 mentioned in the chart. A urine drug screen was performed which detected only prescribed  
18 medications. Respondent did not refer patient J.H. to an orthopedic specialist, pain  
19 specialist or drug addiction specialist.

20 M. On or about November 4, 2009, patient J.H. saw Respondent and reported that  
21 she had been in a motor vehicle accident on October 14, 2009, in which she was rear-ended  
22 and her car "totaled." The patient reported new neck stiffness and pain. An assessment for  
23 cervical and lumbar sprain was conducted but no plan of treatment was set forth.

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24 <sup>6</sup> Ibuprofen is an over the counter medication intended to treat pain and inflammation.

25 <sup>7</sup> Demerol is a brand name for meperidine hydrochloride, a derivative of pethidine. It is a  
26 controlled substance under California Health and Safety Code section 11055, subdivision (c)(17),  
and a dangerous drug within the meaning of Business and Professions Code section 4022.

27 <sup>8</sup> Maxalt, a brand name for rizatriptan, is a dangerous drug within the meaning of Business  
28 and Professions Code section 4022. It is intended for the treatment of migraine attacks in adults.

1 Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist or drug  
2 addiction specialist.

3 N. On or about December 3, 2009, patient J.H. returned to Respondent with  
4 continued complaints of pain. Respondent's plan is illegible. Respondent prescribed  
5 Oxycontin 80 mg #120 (which was refilled on December 19, 2009, and January 26, 2010).  
6 Respondent also prescribed oxycodone 30 mg #160 (which was refilled on December 19,  
7 2009, and January 26, 2010). Respondent did not refer patient J.H. to an orthopedic  
8 specialist, pain specialist or drug addiction specialist.

9 O. On or about December 29, 2009, patient J.H. reported to Respondent that she  
10 had severe migraines and back pain. She also reported new stress due to the break up of a  
11 relationship and stated that she had trouble sleeping. Her medications were renewed.  
12 Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist or drug  
13 addiction specialist.

14 P. On or about January 26, 2010, the patient saw Respondent with complaints of  
15 an injured knee and low back pain. A urine drug screen was performed which detected  
16 only prescribed medications. Respondent did not refer patient J.H. to an orthopedic  
17 specialist, pain specialist or drug addiction specialist.

18 Q. On or about February 18, 2010, patient J.H. told Respondent that she had a  
19 migraine triggered by neck and back pain. Toradol<sup>9</sup> and morphine<sup>10</sup> were given  
20 intramuscularly. A urine drug screen was performed which detected only prescribed  
21 medications. Respondent did not refer patient J.H. to an orthopedic specialist, pain  
22 specialist or drug addiction specialist.

23  
24  
25 <sup>9</sup> Toradol is a brand name for ketoralac and a dangerous drug within the meaning of  
26 Business and Professions Code section 4022. It is an injectable, non-steroidal anti-inflammatory  
medication intended to relieve pain.

27 <sup>10</sup> Morphine is a controlled substance under the California Health and Safety Code,  
28 section 11055, subdivision (b)(1)(M), and a dangerous drug within the meaning of Business and  
Professions Code section 4022. It is intended for severe pain.

1           R.    On or about March 12, 2010, the patient described to Respondent back pain  
2 radiating to her neck and head. She reported having a migraine. Her medications were  
3 refilled and she was also given Toradol and morphine intramuscularly. Respondent did not  
4 refer patient J.H. to an orthopedic specialist, pain specialist or drug addiction specialist. The  
5 patient filled a prescription from Respondent for oxycodone 30 mg #180 on this date, a 90  
6 day supply. On March 15, 2010, the patient filled a prescription from Respondent for  
7 Oxycontin 80 mg #180, a 120 day supply.

8           S.    On or about March 31, 2010, the patient saw Respondent with a complaint of  
9 migraine. Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist  
10 or drug addiction specialist. On this date the patient filled a prescription for oxycodone 30  
11 mg #180. One week later, on April 7, 2010, a prescription from Respondent for Oxycontin  
12 80 mg #120 was filled by the patient.

13           T.    On or about April 30, 2010, Respondent noted in the chart that the patient was  
14 improving. Her medications were refilled and a diagnosis of fibromyalgia and post  
15 traumatic disorder were noted. Respondent did not refer patient J.H. to an orthopedic  
16 specialist, pain specialist or drug addiction specialist. A urine drug screen was performed  
17 which detected only prescribed medications. Patient J.H. filled a prescription from  
18 Respondent on this date for oxycodone 30 mg #180, a 90 day supply. She also filled on the  
19 same day a prescription from Respondent for Oxycontin 80 mg #120, an approximately 120  
20 day supply.

21           U.    On or about May 26, 2010, patient J.H. saw Respondent with a complaint of a  
22 fall after lifting heavy objects. She was noted to have neck pain. A plan to decrease the  
23 amount of opioids was documented. Respondent did not refer patient J.H. to an orthopedic  
24 specialist, pain specialist or drug addiction specialist. Patient on this date filled a  
25 prescription from Respondent for 30 mg #180. On June 7, 2010, the patient filled a  
26 prescription from Respondent for Oxycontin 80 mg #20, a 20 day supply. On June 11,  
27 2010, the patient filled a prescription from Respondent for Oxycontin 80 mg #40, a 40 day  
28 supply. On June 21, 2010, she filled a prescription from Respondent for Oxycontin 80 mg

1 #40, a 40 day supply. (Between April 30, 2010, and June 21, 2010, a two month period, an  
2 eight (8) month supply of Oxycontin was prescribed by Respondent and filled.)

3 V. On or about July 1, 2010, the patient was seen by Respondent. The chart is  
4 illegible. Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist or  
5 drug addiction specialist. On July 6, 2010, 16 days after her last 40 day supply was filled,  
6 the patient filled a prescription from Respondent for Oxycontin #120, another 120 day  
7 supply. Respondent also prescribed Suboxone<sup>11</sup> for the patient.

8 W. On or about July 20, 2010, Respondent saw patient J.H. for migraine and  
9 prescribed Dilaudid<sup>12</sup> 8 mg #30. Respondent ordered a drug screen which came back  
10 positive for cocaine. Respondent resumed Oxycontin 80 mg #120 for the patient and also  
11 wrote for her a prescription for oxycodone 30 mg #180. Respondent did not address the  
12 positive test for cocaine. Respondent did not refer patient J.H. to an orthopedic specialist,  
13 pain specialist or drug addiction specialist.

14 X. On or about November 8, 2010, patient J.H. reported to Respondent that she  
15 had been arrested for possession of prescribed pain medications and was ordered to rehab  
16 for seven days where she endured withdrawal symptoms. The patient claimed that she was  
17 coerced into stating that she was an addict but disputes that designation. The patient  
18 indicated that she was out of medications and as a consequence was totally disabled. A  
19 urine drug screen was performed which detected no medications. Respondent refilled the  
20 oxycodone 30 mg #120 prescription. Respondent also refilled Suboxone and Xanax for the  
21 patient. Respondent did not refer patient J.H. to an orthopedic specialist, pain specialist or  
22 drug addiction specialist. Respondent did not seek to obtain records from any rehabilitation  
23 facilities.

24 <sup>11</sup> Suboxone (buprenorphine) is a Schedule V controlled substance under California  
25 Health and Safety Code section 11058, subdivision (d), and a dangerous drug within the meaning  
of Business and Professions Code section 4022. It is used to treat opiate addiction.

26 <sup>12</sup> Delaudid is a brand name for hydromorphone, a Schedule II controlled substance under  
27 the California Health and Safety Code, section 11055, subdivision (b)(1)(J), and a dangerous drug  
28 within the meaning of Business and Professions Code section 4022. It is used for the relief of  
severe pain.

1 Y. Between on or about April 6, 2009, and November 8, 2010, Respondent was  
2 grossly negligent when he prescribed clearly excessive amounts of narcotic analgesics,  
3 including Oxycontin and oxycodone.

4 SECOND CAUSE FOR DISCIPLINE

5 (Repeated Negligent Acts)

6 10. Respondent is subject to disciplinary action under section 2234, subdivision (c), of  
7 the Code in that Respondent was repeatedly negligent in the care and treatment of a patient. The  
8 circumstances are as follows:

9 A. The facts and circumstance alleged in paragraph 9 above are incorporated here  
10 as if fully set forth.

11 B. Between on or about April 6, 2009, and November 8, 2010, Respondent was  
12 negligent when he prescribed clearly excessive amounts of narcotic analgesics, including  
13 Oxycontin and oxycodone.

14 C. Between on or about April 6, 2009, and November 8, 2010, Respondent was  
15 negligent when he failed to address the patient's addiction and/or abuse of narcotic  
16 analgesics, including Oxycontin, oxycodone and cocaine.

17 D. Between on or about September 11, 2009, and November 8, 2010, Respondent  
18 was negligent when he failed to refer patient J.H. to an orthopedic specialist, pain specialist  
19 or drug addiction specialist.

20 THIRD CAUSE FOR DISCIPLINE

21 (Incompetence)

22 11. Respondent is subject to disciplinary action under section 2234, subdivision (d), of  
23 the Code in that Respondent was incompetent in the care and treatment of a patient. The  
24 circumstances are as follows:

25 A. The facts and circumstance alleged in paragraphs 9 and 10 above are  
26 incorporated here as if fully set forth.

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FOURTH CAUSE FOR DISCIPLINE

(Excessive Prescribing)

12. Respondent is subject to disciplinary action under section 725 of the Code in that Respondent clearly excessively prescribed narcotic medications to a patient. The circumstances are as follows:

A. The facts and circumstance alleged in paragraph 9 above are incorporated here as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

13. Respondent is subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate records relating to the provision of services to patient J.H. The circumstances are as follows:

A. The facts and circumstance alleged in paragraph 9 above are incorporated here as if fully set forth.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under section 2234 of the Code in that Respondent engaged in unprofessional conduct in the care and treatment of a patient. The circumstances are as follows:

A. The facts and circumstance alleged in paragraphs 9 through 13 above are incorporated here as if fully set forth.

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PRAYER

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

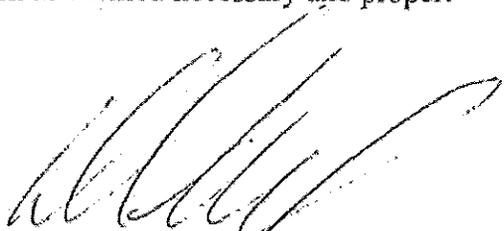
1. Revoking or suspending Physician's and Surgeon's Certificate Number A 36932, issued to Otero Julio Gabriel Diaz, M.D.;

2. Revoking, suspending or denying approval of Otero Julio Gabriel Diaz, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Otero Julio Gabriel Diaz, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: March 7, 2012



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LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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