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

11 In the Matter of the Petition to Revoke
12 Probation Against:

13 **Dan Sodusta Mallada, M.D.**
14 **342 West Trenton Ave.**
15 **Clovis, CA 93611**

16 **Physician's and Surgeon's Certificate**
17 **No. C 43360,**

18 Respondent.

Case No. 800-2016-026240

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about May 29, 1996, the Medical Board Physician's and Surgeon's Certificate
20 Number C 43360 to (Respondent). Respondent's Physician's and Surgeon's Certificate expired
21 on February 28, 2014 and is in a delinquent status. A true and correct copy of the Certificate of
22 Licensure is attached as **Exhibit 1** in the separate accompanying "Default Decision Evidence
23 Packet."¹

24 2. On or about December 29, 2016, Complainant Kimberly Kirchmeyer, in her official
25 capacity as the Executive Director of the Medical Board of California, Department of Consumer
26 Affairs, filed the Petition to Revoke Probation No. 800-2016-026240 against Dan Sodusta

27 ¹ The Exhibits referred to herein, which are true and correct copies of the originals, are
28 contained in the separate accompanying "Default Decision Evidence Packet."

1 Mallada (Respondent) before the Medical Board of California. A true and correct copy of the
2 Petition to Revoke Probation No. 800-2016-026240 and related documents is attached as **Exhibit**
3 **2** in the separate accompanying "Default Decision Evidence Packet."

4 3. On or about December 29, 2016, Richard M. Acosta, an employee of the Complainant
5 Agency, served respondent with the instant Petition to Revoke Probation No. 800-2016-026240,
6 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
7 sections 11507.5, 11507.6, and 11507.7, via certified and first class mail, at Respondent's address
8 of record with the Board: 342 West Trenton Ave., Clovis, CA 93611 certified return receipt no.
9 7012-3460-0000-2386-6440. A true and correct copy of the Declaration of Service is attached as
10 **Exhibit 3** in the separate accompanying "Default Decision Evidence Packet." The service was
11 returned as Not deliverable as addressed/Unable to Forward Receipt no. 7012-3460-0000-2386-
12 6440. A true and correct copy of the Return of Service is attached as **Exhibit 4** in the separate
13 accompanying "Default Decision Evidence Packet."

14 4. On or about June 2, 2017, the California Department of Justice, Office of the
15 Attorney General, served respondent with a Courtesy Notice of Default No. 800-2016-026240,
16 Petition to Revoke Probation No. 800-2016-026240, and Notice of Defense, via certified and first
17 class mail, on two alternative known addresses for Respondent: 342 West Trenton Ave., Clovis,
18 CA 93611 certified return receipt no. 7012-3460-0000-2386-6440, and 342 West Trenton Ave.,
19 Clovis, CA 93619 certified return receipt no. 9214890160882500005677. A true and correct copy
20 of the Courtesy Notice of Default is attached as **Exhibit 5** and the Declarations of Service are
21 attached as **Exhibit 6** in the separate accompanying "Default Decision Evidence Packet." The
22 services were returned as Return to Sender/Not deliverable as addressed/Unable to Forward
23 Receipt nos. 7012-3460-0000-2386-6440, and 9214890160882500005677. True and correct
24 copies of the Return of Services are attached as **Exhibit 7** in the separate accompanying "Default
25 Decision Evidence Packet."

26 5. A true and correct copy of the declaration of Deputy Attorney General Demond L.
27 Philson is attached as **Exhibit 8** in the separate accompanying "Default Decision Evidence
28 Packet," and is incorporated herein by reference. The facts alleged therein are deemed true and

1 shall form part of the administrative record relied upon by the agency in its determination of the
2 issues.

3 6. A true and correct copy of the declaration of probation monitor Christina Valencia is
4 attached as **Exhibit 9** in the separate accompanying "Default Decision Evidence Packet," and is
5 incorporated herein by reference. The facts alleged therein are deemed true and shall form part of
6 the administrative record relied upon by the agency in its determination of the issues.

7 7. Service of the Petition to Revoke Probation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 8. Government Code section 11506 states, in pertinent part:

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

14 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation and Petition to Revoke Probation, and therefore waived her right to a hearing on
16 the merits of Petition to Revoke Probation No. 800-2016-026240.

17 10. California Government Code section 11520 states, in pertinent part:

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

21 11. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it, contained in
24 Default Decision Evidence Packet, finds that the allegations in the Petition to Revoke Probation
25 No. 800-2016-026240 are true and correct.

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2 DETERMINATION OF ISSUES

3 1. Based on the foregoing findings of fact, Respondent Dan Sodusta Mallada has
4 subjected his Physician's and Surgeon's Certificate No. C 43360 to revocation.

5 2. A copy of the Petition to Revoke Probation and the related documents and
6 Declaration of Service are attached in the Default Decision Evidence Packet.

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

8 4. Pursuant to the authority under California Government Code section 11520, and
9 based on the evidence before it, the Board hereby finds that the charges and allegations contained
10 in Petition Revoke No. 800-2016-026240, and the Findings of Fact contained in paragraphs 1
11 through 13, above, and each of them, separately and severally, are true and correct.

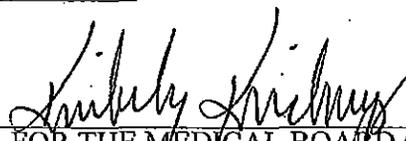
12 ORDER

13 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C 43360, heretofore
14 issued to Respondent Dan Sodusta Mallada is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
16 written motion requesting that the Decision be vacated and stating the grounds relied on within
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on September 29, 2017, at 5 p.m.

20 It is so ORDERED August 30, 2017

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23 FOR THE MEDICAL BOARD OF CALIFORNIA
24 DEPARTMENT OF CONSUMER AFFAIRS
25 Kimberly Kirchmeyer
26 Executive Director
27
28

1 KAMALA D. HARRIS
Attorney General of California
2 MATTHEW M. DAVIS
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Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Dec 29 2016*
BY: *[Signature]* ANALYST

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

13 In the Matter of the Petition to Revoke Probation
Against,

Case No. 800-2016-026240

14 **DAN SODUSTA MALLADA, M.D.**
15 342 West Trenton Ave.
16 Clovis, CA 93611

**PETITION TO REVOKE
PROBATION**

17 Physician's and Surgeon's Certificate No. C 43360
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely
23 in her official capacity as the Executive Director of the Medical Board of California, Department
24 of Consumer Affairs.

25 2. On or about May 29, 1996, the Medical Board of California issued Physician's and
26 Surgeon's Certificate Number C 43360 to Dan Sodusta Mallada, M.D. (Respondent). The
27 Physician's and Surgeon's Certificate expired on February 28, 2014, and has not been renewed.

28 ///

1 completed by the licensee, or other matters made confidential or privileged by existing law, is
2 deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

3 **FIRST CAUSE TO REVOKE PROBATION**

4 (Failure to Submit Quarterly Reports)

5 6. At all times after the effective date of Respondent’s Probation, Condition No. 14
6 stated:

7 “Respondent shall submit quarterly declarations under penalty of perjury on forms provided
8 by the Division, stating whether there has been compliance with all the conditions of probation.”

9 7. Respondent’s probation is subject to revocation because he failed to comply with
10 Probation Condition 14, referenced above. The facts and circumstances regarding this violation
11 are as follows:

12 A. On or about December 21, 2001, Respondent was placed on probation and was in
13 pended (non-practice) status. Respondent was notified that while in pended status, any period of
14 time the Respondent is not practicing medicine in California for at least 40 hours in a calendar
15 month, the probation clock stops and the probationer is relieved from completing the Optional
16 conditions of his probation with the exception of the following Standard condition:

17 QUARTERLY REPORTS. Respondent failed to comply with the Standard condition.

18 B. Respondent failed to submit quarterly/semiannual declarations.

19 8. Respondent’s probation is subject to revocation because he failed to comply with
20 Probation Condition 14, referenced above.

21 **SECOND CAUSE TO REVOKE PROBATION**

22 (Failure to Comply with Probation Surveillance Program)

23 9. At all times after the effective date of Respondent’s Probation, Condition No. 15
24 stated:

25 “Respondent shall comply with the Division’s¹ probation surveillance program. Respondent
26 shall, at all times, keep the Division informed of his business and residence addresses which shall

27 ¹ Pursuant to Business and Professions Code section 2002, the “Division of Medical
28 Quality” or “Division” shall be deemed to refer to the Medical Board of California.

1 both serve as addresses of record. Changes of such addresses shall be immediately communicated
2 in writing to the Division. Under no circumstances shall a post office box serve as an address of
3 record, except as allowed by Business and Professions Code section 2021(b).

4 Respondent shall, at all times, maintain a current and renewed physician's and surgeon's
5 license.

6 Respondent shall also immediately inform the Division, in writing, of any travel to any
7 areas outside the jurisdiction of California which lasts or is contemplated to last more than thirty
8 (30) days."

9 10. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 15, referenced above. The facts and circumstances regarding this violation
11 are as follows:

12 A. On or about December 21, 2001, Respondent was placed on probation and was in
13 pended (non-practice) status. Respondent was notified that while in pended status, any period of
14 time the Respondent is not practicing medicine in California for at least 40 hours in a calendar
15 month, the probation clock stops and the probationer is relieved from completing the Optional
16 conditions of his probation with the exception of the following Standard condition: PROBATION
17 SURVEILLANCE PROGRAM COMPLIANCE. Respondent failed to comply with the Standard
18 condition.

19 B. Respondent's license has been expired since February 28, 2014.

20 C. Respondent failed to maintain a renewed and current physician's and surgeon's
21 License.

22 D. Respondent failed to respond to requests for interviews.

23 E. Respondent failed to maintain a current Address of Record with the Board.

24 11. Respondent's probation is subject to revocation because he failed to comply with
25 Probation Condition 15, referenced above.

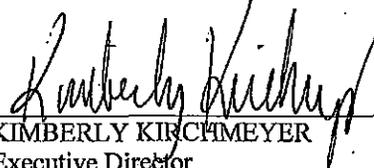
26 **PRAYER**

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

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1. Revoking the probation that was granted by the Medical Board of California in Case No. 08-2001-119217 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. C 43360 issued to Dan Sodusta Mallada, M.D.;
2. Revoking or suspending Physician's and Surgeon's Certificate No. C 43360, issued to Dan Sodusta Mallada, M.D.;
3. Revoking, suspending or denying approval of Dan Sodusta Mallada, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
4. Ordering Dan Sodusta Mallada, M.D. to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;
5. Taking such other and further action as deemed necessary and proper.

DATED: December 29, 2016


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

FR2016302252
32655033.doc

Exhibit A

Decision and Order

Medical Board of California Case No. 08-2001-119217

H

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

In the Matter of the Accusation Against:

DAN SODUSTA MALLADA, M.D.
5730 N. First Street, Suite 105
PMB #205, Fresno, CA 93710

Physician's and Surgeon's Certificate
No. C- 43360

Respondent.

Case No. 08-2001-119217

OAH No. N-2001-070160

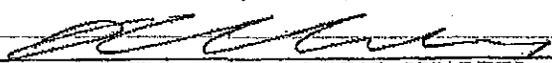
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 20, 2001 at 5:00 p.m.

It is so ORDERED November 20, 2001.

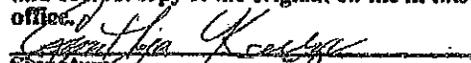
HAZEM H. CHEHABT, M.D., President



FOR THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

MEDICAL BOARD OF CALIFORNIA

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



Signature

Title

9/19/2016
Date

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
4 Fresno, California 93721
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5 Facsimile: (559) 488-7387

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 DAN SODUSTA MALLADA, M.D.
5730 N. First Street, Suite 105
PMB #205
Fresno, CA 93710

15 Physician's and Surgeon's Certificate
16 No. C-43360

17 Respondent.

Case No. 08-2001-119217

OAH No. N-2001-070160

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the
20 public interest and the responsibility of the Division of Medical Quality, Medical Board of
21 California of the Department of Consumer Affairs, the parties hereby agree to the following
22 Stipulated Settlement and Disciplinary Order which will be submitted to the Division for
23 approval and adoption as the final disposition of the Accusation.

24 PARTIES

25 1. Ron Joseph (Complainant) is the Executive Director of the Medical Board
26 of California. He brought this action solely in his official capacity and is represented in this
27 matter by Bill Lockyer, Attorney General of the State of California, by Isa R. Rodriguez, Deputy
28 Attorney General.

1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation No. 08-2001-119217, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate No. C-43360.

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

9 10. Respondent agrees that his Physician's and Surgeon's Certificate No. C-
10 43360 is subject to discipline and he agrees to be bound by the Division's imposition of
11 discipline as set forth in the Disciplinary Order below.

12 CIRCUMSTANCES IN MITIGATION

13 11. Respondent DAN SODUSTA MALLADA, M.D. was initially licensed to
14 practice medicine in the State of New Jersey in 1982 before moving to California. Respondent
15 has never been the subject of any disciplinary action. Respondent was also in the United States
16 Army where he was a recipient of unit commendations for education and safety programs.
17 Additionally, while in the army, respondent served in the Persian Gulf conflict. He is
18 acknowledging responsibility at an early stage in the proceedings in order to avoid the
19 uncertainty and expense of going to hearing.

20 RESERVATION

21 12. The admissions made by Respondent herein are only for the purposes of
22 this proceeding; or any other proceedings in which the Division of Medical Quality, Medical
23 Board of California or other professional licensing agency is involved, and shall not be
24 admissible in any other criminal or civil proceeding.

25 CONTINGENCY

26 13. This stipulation shall be subject to approval by the Division. Respondent
27 understands and agrees that the Medical Board of California's staff and counsel for Complainant
28 may communicate directly with the Division regarding this stipulation and settlement, without

1 notice to or participation by Respondent. By signing the stipulation, Respondent understands and
2 agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time
3 the Division considers and acts upon it. If the Division fails to adopt this stipulation as its
4 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
5 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
6 and the Division shall not be disqualified from further action by having considered this matter.

7 14. The parties understand and agree that facsimile copies of this Stipulated
8 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
9 force and effect as the originals.

10 15. In consideration of the foregoing admissions and stipulations, the parties
11 agree that the Division may, without further notice or formal proceeding, issue and enter the
12 following Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C-
15 43360 issued to Respondent DAN SODUSTA MALLADA, M.D. is revoked. However, the
16 revocation is stayed and Respondent is placed on probation for five (5) years on the following
17 terms and conditions.

18 Within 15 days after the effective date of this decision the respondent shall
19 provide the Division, or its designee, proof of service that respondent has served a true copy of
20 this decision on the Chief of Staff or the Chief Executive Officer at every hospital where
21 privileges or membership are extended to respondent or at any other facility where respondent
22 engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier
23 where malpractice insurance coverage is extended to respondent.

24 1. **ACTUAL SUSPENSION** As part of probation, respondent is suspended
25 from the practice of medicine for 6 months beginning from June 26, 2001, the date the Interim
26 Suspension Order issued in this matter (OAH No. N-2001-060184).

27 2. **DRUGS & ABSTAIN FROM USE** Respondent shall abstain completely
28 from the personal use or possession of controlled substances as defined in the California Uniform

1 Controlled Substances Act, and dangerous drugs as defined by Section 421.1 of the Business and
2 Professions Code, or any drugs requiring a prescription. This prohibition does not apply to
3 medications lawfully prescribed to respondent for a *bona fide* illness or condition by another
4 practitioner.

5 3. ALCOHOL - ABSTAIN FROM USE Respondent shall abstain
6 completely from the use of alcoholic beverages.

7 4. BIOLOGICAL FLUID TESTING Respondent shall immediately submit
8 to biological testing, at respondent's cost, upon the request of the Division or its designee.

9 5. EDUCATION COURSE Within ninety (90) days of the effective date of
10 this decision, and on an annual basis thereafter, respondent shall submit to the Division or its
11 designee for its prior approval an educational program or course to be designated by the Division
12 or its designee which shall be aimed at correcting any areas of deficient practice or knowledge
13 which shall not be less than 20 hours per year, for each year of probation. This program shall be
14 in addition to the Continuing Medical Education (CME) requirements for re-licensure.
15 Following the completion of each course, the Division or its designee may administer an
16 examination to test respondent's knowledge of the course. Respondent shall provide proof of
17 attendance for 45 hours of continuing medical education of which 20 hours were in satisfaction
18 of this condition and were approved in advance by the Division or its designee.

19 6. ETHICS COURSE Within sixty (60) days of the effective date of this
20 decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its
21 designee, and shall successfully complete the course during the first year of probation.

22 7. PHYSICIAN ASSESSMENT AND CLINICAL EDUCATION
23 PROGRAM Within ninety (90) days from the effective date of this decision, Respondent, at
24 his expense, shall enroll in the Physician Assessment and Clinical Education Program at the
25 University of California, San Diego School of Medicine (hereinafter, the "PACE Program") and
26 shall undergo assessment, clinical training and examination. First, the Respondent shall undergo
27 the comprehensive assessment program including the measurement of medical skills and
28 knowledge, the appraisal of physical health and psychological testing. After assessment, the

1 PACE Evaluation Committee will review all results and make a recommendation to the Division
2 or its designee, the Respondent and other authorized personnel as to what clinical training is
3 required, including scope and length, treatment of any medical or psychological condition, and
4 any other factors affecting the Respondent's practice of medicine. The Respondent shall
5 undertake whatever clinical training and treatment of any medical or psychological condition as
6 may be recommended by the PACE Program.

7 Finally, at the completion of the PACE Program, Respondent shall submit to an
8 examination on its contents and substance. The examination shall be designed and administered
9 by the PACE faculty. Respondent shall not be deemed to have successfully completed the
10 program unless he/she passes the examination. Respondent agrees that the determination of the
11 PACE Program faculty as to whether or not he/she has passed the examination and/or
12 successfully completed the PACE Program shall be binding.

13 Respondent shall complete the PACE Program no later than six (6) months after
14 his/her initial enrollment unless the Division or its designee agrees in writing to a later time for
15 completion.

16 If Respondent successfully completes the PACE Program, including the
17 examination referenced above, he/she agrees to cause the PACE representatives to forward a
18 Certification of Successful Completion of the program to the Division or its designee.

19 If Respondent fails to successfully complete the PACE Program within the time
20 limits outlined above, he shall be suspended from the practice of medicine.

21 Failure to participate in, and successfully complete all phases of the PACE
22 Program, as outlined above, shall constitute a violation of probation.

23 8 ORAL CLINICAL OR WRITTEN EXAM Respondent shall take and
24 pass an oral clinical exam or written exam in the subject of anesthesiology and administered by
25 the Division or its designee. This examination shall be taken within sixty (60) days after
26 completion of the PACE Program. If respondent fails the first examination, respondent shall be
27 allowed to take and pass a second examination, which may consist of a written as well as an oral
28 examination. The waiting period between the first and second examinations shall be at least

1 three (3) months. If respondent fails to pass the first and second examinations, respondent may
2 take a third and final examination after waiting a period of one (1) year. Failure to pass the oral
3 clinical examination within eighteen (18) months after the effective date of this decision shall
4 constitute a violation of probation. The respondent shall pay the costs of all examinations. For
5 purposes of this condition, if respondent is required to take and pass a written exam, it shall be
6 either the Special Purpose Examination (SPEX) or equivalent examination as determined by the
7 Division or its designee.

8 Respondent shall not practice medicine until respondent has passed the required
9 examination and has been so notified by the Division or its designee in writing. This prohibition
10 shall not bar respondent from practicing in a clinical training program approved by the Division
11 or its designee. Respondent's practice of medicine shall be restricted only to that which is
12 required by the approved training program.

13 9. PSYCHIATRIC EVALUATION Within thirty (30) days of the effective
14 date of this decision, and on a periodic basis thereafter as may be required by the Division or its
15 designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed
16 necessary) by a Division-appointed psychiatrist, who shall furnish an evaluation report to the
17 Division or its designee. The respondent shall pay the cost of the psychiatric evaluation.

18 If respondent is required by the Division or its designee to undergo psychiatric
19 treatment, respondent shall within thirty (30) days of the requirement notice submit to the
20 Division for its prior approval the name and qualifications of a psychiatrist of respondent's
21 choice. Respondent shall undergo and continue psychiatric treatment until further notice from
22 the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly
23 status reports to the Division or its designee indicating whether the respondent is capable of
24 practicing medicine safely.

25 In furtherance of this provision, respondent agrees to sign a medical release
26 authorizing the Division-appointed psychiatrist access to respondent's psychiatric/medical
27 records. Information obtained in this manner shall be used to ensure a complete and accurate
28 psychiatric evaluation.

*Don
HRC*

1 Respondent shall not engage in the practice of medicine until notified by the
2 Division, or its designee, of its determination that respondent is mentally fit to practice safely.

3 If the evaluation or the treating psychiatrist's report determines that respondent is
4 not mentally fit to practice medicine safely, then respondent shall be suspended from the practice
5 of medicine until a repeat evaluation establishes that he can practice safely, as evidenced by
6 written notice to respondent from the Division or its designee.

7 10. PSYCHOTHERAPY If the Division-appointed psychiatrist determines
8 that respondent requires ongoing psychotherapy, respondent shall, within sixty (60) days of
9 notice of this determination, submit to the Division or its designee for its prior approval the name
10 and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall
11 undergo and continue treatment until the Division or its designee deems that no further
12 psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly
13 status reports to the Division or its designee. The Division or its designee may require
14 respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist. If, prior to
15 the termination of probation, respondent is found not to be mentally fit to resume the practice of
16 medicine without restrictions, the Division shall retain continuing jurisdiction over the
17 respondent's license and the period of probation shall be extended until the Division determines
18 that the respondent is mentally fit to resume the practice of medicine without restrictions. The
19 respondent shall pay the cost of the therapy and evaluations.

20 11. MONITORING Within thirty (30) days of the effective date of this
21 decision, respondent shall submit to the Division or its designee for its prior approval a plan of
22 practice in which respondent's practice shall be monitored by another physician in respondent's
23 field of practice, who shall provide periodic reports to the Division or its designee.

24 If the monitor resigns or is no longer available, respondent shall, within fifteen
25 (15) days, move to have a new monitor appointed, through nomination by respondent and
26 approval by the Division or its designee.

27 Respondent is prohibited from engaging in solo practice.

28 12. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,

1 respondent is prohibited from supervising physician assistants.

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

5 14. QUARTERLY REPORTS Respondent shall submit quarterly
6 declarations under penalty of perjury on forms provided by the Division, stating whether there
7 has been compliance with all the conditions of probation.

8 15. PROBATION SURVEILLANCE PROGRAM COMPLIANCE
9 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
10 at all times, keep the Division informed of his business and residence addresses which shall both
11 serve as addresses of record. Changes of such addresses shall be immediately communicated in
12 writing to the Division. Under no circumstances shall a post office box serve as an address of
13 record, except as allowed by Business and Professions Code section 2021(b).

14 Respondent shall, at all times, maintain a current and renewed physician's and
15 surgeon's license.

16 Respondent shall also immediately inform the Division, in writing, of any travel
17 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
18 than thirty (30) days.

19 16: INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS
20 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for interviews with the
21 Division, its designee or its designated physician(s) upon request at various intervals and with
22 reasonable notice.

23 17. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
24 STATE NON-PRACTICE In the event respondent should leave California to reside or to
25 practice outside the State or for any reason should respondent stop practicing medicine in
26 California, respondent shall notify the Division or its designee in writing within ten (10) days of
27 the dates of departure and return or the dates of non-practice within California. Non-practice is
28 defined as any period of time exceeding thirty (30) days in which respondent is not engaging in

1 any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time
2 spent in an intensive training program approved by the Division or its designee shall be
3 considered as time spent in the practice of medicine. A Board-ordered suspension of practice
4 shall not be considered as a period of non-practice. Periods of temporary or permanent residence
5 or practice outside California or of non-practice within California, as defined in this condition,
6 will not apply to the reduction of the probationary order.

7 18. COMPLETION OF PROBATION Upon successful completion of
8 probation, respondent's certificate shall be fully restored.

9 19. VIOLATION OF PROBATION If respondent violates probation in any
10 respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke
11 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
12 revoke probation is filed against respondent during probation, the Division shall have continuing
13 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
14 is final.

15 20. COST RECOVERY The respondent is hereby ordered to reimburse the
16 Division the amount of \$4,000 for its investigative and prosecution costs. The reimbursement
17 shall be made in four equal installments of \$1,000 (one thousand dollars) each, due every 6
18 months, with the first installment due six months after the effective date of this decision.
19 Installment payments, shall be by way of money order or cashier's check made payable to the
20 order of the Medical Board of California. Failure to reimburse the Division's cost of
21 investigation and prosecution shall constitute a violation of the probation order, unless the
22 Division agrees in writing to payment by an installment plan because of financial hardship. The
23 filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to
24 reimburse the Division for its investigative and prosecution costs.

25 21. PROBATION COSTS Respondent shall pay the costs associated with
26 probation monitoring each and every year of probation, as designated by the Division, which are
27 currently set at \$2,488, but may be adjusted on an annual basis. Such costs shall be payable to
28 the Division of Medical Quality and delivered to the designated probation surveillance monitor

1 no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due
2 date shall constitute a violation of probation.

3 22. LICENSE SURRENDER Following the effective date of this decision, if
4 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
5 the terms and conditions of probation, respondent may voluntarily tender his certificate to the
6 Board. The Division reserves the right to evaluate the respondent's request and to exercise its
7 discretion whether to grant the request, or to take any other action deemed appropriate and
8 reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent
9 will not longer be subject to the terms and conditions of probation.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I
12 understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate
13 No. C-43360. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
14 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Division of
15 Medical Quality, Medical Board of California.

16 DATED: November 14, 2001

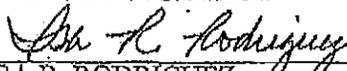
17 
18 DAN SODUSTA MALLADA, M.D.
19 Respondent

20 ENDORSEMENT

21 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
22 submitted for consideration by the Division of Medical Quality, Medical Board of California of
23 the Department of Consumer Affairs.

24 DATED: November 14, 2001

25 BILL LOCKYER, Attorney General
26 of the State of California

27 
28 ISA R. RODRIGUEZ
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 08-2001-119217

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
4 Fresno, California 93721
Telephone: (559) 444-2417
5 Facsimile: (559) 488-7387
6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 9, 20 01
BY Kimberly K. [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 08 2001 119217

11 DAN SODUSTA MALLADA, M.D.
12 1011 E. Sierra #102
Fresno, CA 93710

ACCUSATION

13 Physician And Surgeon Certificate No. C-43360

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true
and correct copy of the original on file in this
office.

Respondent.

Conthia Lopez
Signature
La Custodian of records
Title
9/19/2016
Date

17 Complainant alleges:

18 PARTIES

- 19 1. Ron Joseph ("Complainant") brings this Accusation solely in his official
20 capacity as the Executive Director of the Medical Board Of California.
21 2. On or about May 29, 1996, the Medical Board of California issued
22 Physician And Surgeon Certificate Number C-43360 to Dan Sodusta Mallada, M.D.
23 ("Respondent"). The Physician And Surgeon Certificate was in full force and effect at all times
24 relevant to the charges brought herein and will expire on February 28, 2002, unless renewed.

25 JURISDICTION

- 26 3. This Accusation is brought before the Medical Board of California
27 (hereinafter "Board"), under the authority of the following sections of the Business and
28 Professions Code ("Code").

1 4. Section 2004 of the Code states:

2 "The Division of Medical Quality shall have the responsibility for the following:

3 "(a) The enforcement of the disciplinary and criminal provisions of the Medical
4 Practice Act.

5 "(b) The administration and hearing of disciplinary actions.

6 "(c) Carrying out disciplinary actions appropriate to findings made by a medical
7 quality review committee, the division, or an administrative law judge.

8 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion
9 of disciplinary actions.

10 "(e) Reviewing the quality of medical practice carried out by physician and
11 surgeon certificate holders under the jurisdiction of the board."

12 5. Section 2220 of the Code states:

13 "Except as otherwise provided by law, the Division of Medical Quality may take
14 action against all persons guilty of violating this chapter [Chapter 5, the Medical Practice
15 Act]. The division shall enforce and administer this article as to physician and surgeon
16 certificate holders, and the division shall have all the powers granted in this chapter for
17 these purposes including, but not limited to:

18 "(a) Investigating complaints from the public, from other licensees, from health
19 care facilities, or from a division of the board that a physician and surgeon may be guilty
20 of unprofessional conduct. The board shall investigate the circumstances underlying any
21 report received pursuant to Section 805 within 30 days to determine if an interim
22 suspension order or temporary restraining order should be issued. The board shall
23 otherwise provide timely disposition of the reports received pursuant to Section 805.

24 "(b) Investigating the circumstances of practice of any physician and surgeon
25 where there have been any judgments, settlements, or arbitration awards requiring the
26 physician and surgeon or his or her professional liability insurer to pay an amount in
27 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with respect
28 to any claim that injury or damage was proximately caused by the physician's and

1 surgeon's error, negligence, or omission.

2 "(c) Investigating the nature and causes of injuries from cases which shall be
3 reported of a high number of judgments, settlements, or arbitration awards against a
4 physician and surgeon."

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

9 7. Section 2234 of the Code states:

10 "The Division of Medical Quality shall take action against any licensee who is
11 charged with unprofessional conduct. In addition to other provisions of this article,
12 unprofessional conduct includes, but is not limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or
14 abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter
15 5, the Medical Practice Act].

16 "(b) Gross negligence.

17 "(c) Repeated negligent acts.

18 "(d) Incompetence.

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

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

23 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
24 part:

25 "(a) Upon receipt of written notice from the Medical Board of California, the
26 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
27 that a licensee's license has been placed on probation as a result of a disciplinary action,
28 the department may not reimburse any Medi-Cal claim for the type of surgical service or

1 B. The facts underlying this matter are that on February 26, 2001, Patient
2 R.R.K.,¹ a 26-year-old, 5 ft., 4 in., 270 lb. pregnant female, was admitted to Kaiser Permanente
3 Hospital in Fresno, California, for labor and delivery. At or about 3:20 p.m., pursuant to a
4 physician order stating "OK for epidural," respondent instituted an epidural anesthetic infusion.
5 At 6 p.m., the fetus developed a non-reassuring heart rate pattern and the obstetrician decided to
6 proceed to C-section. Anesthesia induction occurred at 7:05 p.m. with surgical incision at 7:11
7 p.m. After initial abdominal wall incision, respondent extubated the patient after noticing a
8 problem with end tidal carbon dioxide tracing. Respondent tried to reintubate the patient but was
9 having trouble. The remaining incisions were made hurriedly with infant delivery at 7:14 p.m.
10 R.R.K. was eventually reintubated by Dr. Derby, apparently without difficulty. At or about 7:10
11 p.m., "code blue" resuscitation began with different accounts estimating that R.R.K. was oxygen
12 deficient for 10 to 20 minutes during which time she suffered cardiac arrest for approximately 16
13 minutes. After reintubation and successful cardiac resuscitation, R.R.K. was transferred to the
14 coronary care unit where she remained without regaining consciousness until her death on March
15 11, 2001. As a result of respondent's ineffective intubation of R.R.K., the extubation of R.R.K.,
16 and the difficulty respondent had trying to reintubate R.R.K., R.R.K. was anoxic for 10 to 20
17 minutes and never regained consciousness before passing away some two weeks later.

18 C. Respondent's conduct as set forth in paragraphs 10.A. and 10.B. above has
19 exposed his certificated to discipline for gross negligence pursuant to Code section 2234(b) in
20 that:

- 21 1.) He failed to immediately suspect esophageal intubation in the
22 presence of end tidal carbon dioxide tracing (capnograph);
- 23 2.) He failed to recognize a potentially difficult airway in a high risk
24 patient (obese and pregnant);
- 25 3.) He failed to take appropriate steps to deal with such an airway; and
- 26 4.) He failed to properly manage an ineffective epidural anesthetic.

27
28 1. Initials used to protect privacy. Names will be provided through regular discovery.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Gross Negligence/Repeated Negligent Acts/Incompetence - Patient R.R.K.)

3 15. The facts alleged in paragraph 10.A. and 10.B., above, are realleged and
4 incorporated by reference as if fully set forth here.

5 16. Respondent's conduct, as set forth in the First, Second, and Third Causes
6 For Discipline, whether taken collectively, or individually, or in any combination thereof,
7 constitute gross negligence and/or repeated negligent acts and/or incompetence pursuant to Code
8 sections 2234(b) and/or 2234(c) and/or 2234(d).

9 FIFTH CAUSE FOR DISCIPLINE

10 (Gross Negligence - Patient Number 8463658²)

11 17. Respondent is subject to disciplinary action under Code sections 2234(b)
12 and/or 2234(c) and/or 2234(d) in that he failed to properly manage an ineffective epidural
13 anesthetic for labor. The circumstances are as follows:

14 A. On or about April 13, 2001, the Board received copies of the Quality/Risk
15 Management Reviews for four incidents involving the quality of care respondent provided,
16 including that provided to Patient R.R.K. noted above. The care provided to R.R.K. was
17 determined to be "NOT ACCEPTABLE." Two of the cases, Patient Number 8463658, and
18 Patient Number 10533664, noted a "Significant Deviation from Standard of Care - Most peers
19 agree that the clinical practice was not appropriate." The fourth case was determined to be
20 within the standard of care.

21 B. The facts underlying the care provided Patient Number 8463658 are that
22 on or about December 7, 2000, respondent consulted for neuraxial analgesia for labor on a 37-
23 year-old, pregnant female in active labor. Respondent placed an epidural anesthetic at the T12-
24 L1 level which worked initially but, as labor progressed, did not seem to work at all. Dr. Derby
25 relieved respondent and properly replaced the epidural anesthetic at the L4-L5 level which
26

27
28

2. Patient number used to protect privacy. Names will be provided through regular
discovery.

1 completely relieved all pain and discomfort. When Dr. Derby asked about the placement of the
2 epidural anesthetic, respondent stated "L3-L4" which was not the placement Dr. Derby found.
3 Dr. Derby also questioned respondent about the contraindicated use of NSAIDS (Nonsteroidal
4 Anti-Inflammatory Drugs) in pregnancy and especially labor. Respondent stated he had read
5 about using NSAIDS but offered nothing more. Respondent's course of action is counter to the
6 warnings against such usage in the Physician Desk Reference (PDR). Dr. Derby concluded he
7 wasn't sure if respondent understood the significance of using NSAIDS in labor and the possible
8 cause of non-closure of PDA (patient ductus arterious) in the child. Additionally, respondent did
9 not document steps for troubleshooting patchy epidural anesthetics for labor.

10 C. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
11 has exposed his certificate to discipline for gross negligence pursuant to Code section 2234(b) in
12 that:

- 13 1. He failed to properly manage an ineffective epidural anesthetic for
14 labor;
- 15 2. He failed to document steps for troubleshooting patchy epidural
16 anesthetics for labor;
- 17 3. He failed to adequately document blood pressure and analgesic
18 response;
- 19 4. He improperly intubated the patient at the T12-L1 level rather than
20 the L4 - L5 level; and
- 21 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
22 are contraindicated in pregnancy and especially in labor.

23 SIXTH CAUSE FOR DISCIPLINE

24 (Repeated Negligent Acts - Patient Number 8463658)

25 18. The facts alleged in paragraphs 17.A. and 17.B. above are realleged and
26 incorporated by reference as if fully set forth here.

27 19. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
28 has exposed his certificate to discipline for repeated negligent acts pursuant to Code section

1 2234(c) in that:

- 2 1. He failed to properly manage an ineffective epidural anesthetic for
- 3 labor;
- 4 2. He failed to document steps for troubleshooting patchy epidural
- 5 anesthetics for labor;
- 6 3. He failed to adequately document blood pressure and analgesic
- 7 response;
- 8 4. He improperly intubated the patient at the T12-L1 level rather than
- 9 the L4 - L5 level; and
- 10 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
- 11 are contraindicated in pregnancy and especially in labor.

12 SEVENTH CAUSE FOR DISCIPLINE

13 (Incompetence - Patient Number 8463658)

14 20. The facts alleged in paragraphs 17.A. and 17.B. above are realleged and
15 incorporated by reference as if fully set forth here.

16 21. Respondent's conduct, as set forth in paragraphs 17.A. and 17.B. above
17 has exposed his certificate to discipline for incompetence pursuant to Code section 2234(d) in
18 that:

- 19 1. He failed to properly manage an ineffective epidural anesthetic for
- 20 labor;
- 21 2. He failed to document steps for troubleshooting patchy epidural
- 22 anesthetics for labor;
- 23 3. He failed to adequately document blood pressure and analgesic
- 24 response;
- 25 4. He improperly intubated the patient at the T12-L1 level rather than
- 26 the L4 - L5 level; and
- 27 5. He used Nonsteroidal Anti-Inflammatory Drugs (NSAIDS) which
- 28 are contraindicated in pregnancy and especially in labor.

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Gross Negligence/Repeat Negligent Acts/Incompetence - Patient Number 8463658)

3 22. The facts alleged in paragraphs 17.A. and 17.B. above are realleged and
4 incorporated by reference as if fully set forth here.

5 23. Respondent's conduct, as set forth in the Fifth, Sixth, and Seventh Causes
6 For Discipline, whether taken collectively, or individually, or in any combination thereof,
7 constitute gross negligence and/or repeated negligent acts and/or incompetence pursuant to Code
8 sections 2234(b) and/or 2234(c) and/or 2234(d).

9 NINTH CAUSE FOR DISCIPLINE

10 (Gross Negligence - Patient Number 10533664)

11 24. Respondent is subject to disciplinary action under sections 2234(b) and/or
12 2234(c) and/or 2234(d) in that respondent failed to monitor intracardiac pressures, intravascular
13 volume, and systemic vascular resistance. The circumstances are as follows:

14 A. The facts underlying the care provided Patient Number 1053364 are that
15 on or about January 15, 2001, respondent performed a general anesthesia using a radial artery
16 line on a 41-year-old male with malignant pheochromocytoma and renal failure who underwent
17 excission of pheochromocytoma, left adrenalectomy and left nephrectomy. A central venous
18 dialysis catheter was in place prior to the surgery but was not used during surgery for pressure
19 monitoring or fluid management. The surgeon in this case, Dr. Soebagio, went to the anesthesia
20 evaluator with his concerns and the evaluator concluded the incident was a window into
21 respondent's "lack of basic medical knowledge."

22 B. Respondent's conduct, as set forth in paragraph 24.A. above has exposed
23 his certificate to discipline for gross negligence pursuant to Code section 2234(b) in that:

- 24 1. He failed to monitor intracardiac pressures, intravascular pressure,
25 and systemic vascular resistance in a high risk patient; and
26 2. He failed to properly assess anesthetic and surgical risk in a high
27 risk patient.
28

1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Gross Negligence/Repeated Negligent Acts/Incompetence

3 30. Respondent's conduct, as set forth in the First, Second, Third, Fifth, Sixth,
4 Seventh, Ninth, Tenth, and Eleventh Cause For Discipline, whether taken collectively, or
5 individually, or in any combination thereof, constitutes gross negligence and/or repeated
6 negligent acts and/or incompetence pursuant to Code sections 2234(b) and/or 2234(c) and/or
7 2234(d).

8 PRAAYER

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

- 11 1. Revoking or suspending Physician And Surgeon Certificate Number
12 C-43360, issued to Dan Sodusta Mallada, M.D.;
- 13 2. Revoking, suspending or denying approval of Dan Sodusta Mallada,
14 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 15 3. Ordering Dan Sodusta Mallada, M.D. to pay the Board the reasonable
16 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
17 probation monitoring;
- 18 4. Taking such other and further action as deemed necessary and proper.

19 DATED: July 9, 2001

20
21
22 *for* *Ron Joseph*
23 RON JOSEPH
24 Executive Director
25 Medical Board Of California
26 State of California
27 Complainant
28

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7/9/01