

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

In the Matter of the Accusation)	
Against:)	
)	
)	
Javier Ponce Escalera, M.D.)	Case No. 16-2011-213165
)	
Physician's and Surgeon's)	
Certificate No. A95344)	
)	
Respondent)	
_____)	

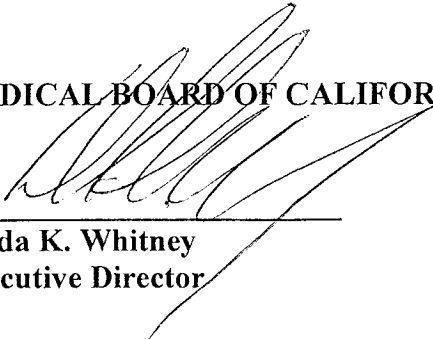
DECISION

The attached Stipulated Surrender of License is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 17, 2012 .

IT IS SO ORDERED February 10, 2012 .

MEDICAL BOARD OF CALIFORNIA

By: 

Linda K. Whitney
Executive Director

1 KAMALA D. HARRIS, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON
Deputy Attorney General [SBN 116564]
4 455 Golden Gate Avenue, Suite 11000
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5 Telephone: (415) 703-5544
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6

7 Attorneys for Complainant

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

11
12 **In the Matter of the Accusation Against:**

13 **JAVIER PONCE ESCALERA, M.D.**

14 Physician's and Surgeon's Certificate No. A95344
15
16

Case No.: 16-2011-213165

**STIPULATED SURRENDER OF
LICENSE**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
proceeding that the following matters are true:

19 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical
20 Board of California. This action has at all times been maintained solely in the official capacity of
21 the Executive Director of the Medical Board of California, who is represented by Kamala D.
22 Harris, Attorney General of the State of California, by Jane Zack Simon, Deputy Attorney
23 General.

24 2. Javier Ponce Escalera, M.D. (Respondent) is representing himself in this
25 proceeding. Respondent's current address is 1710 Hodge Lake Lane, Sugar Land, Texas 77478-
26 4272.

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1 3. Respondent has received, read and understands the Accusation which is
2 presently on file and pending in case number 16-2011-213165 (Accusation) a copy of which is
3 attached as Exhibit A.

4 4. Respondent has carefully read and understands the charges and allegations
5 in the Accusation. Respondent also has carefully read and understands the effects of this
6 Stipulated Surrender of License (Stipulation.)

7 5. Respondent is fully aware of his legal rights in this matter, including the
8 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
9 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
10 the right to present evidence and to testify on his own behalf; the right to the issuance of
11 subpoenas to compel the attendance of witnesses and the production of documents; the right to
12 reconsideration and court review of an adverse decision; and all other rights accorded by the
13 California Administrative Procedure Act and other applicable laws.

14 6. Respondent voluntarily, knowingly, and intelligently waives and gives up
15 each and every right set forth above.

16 7. Respondent agrees that based on allegations set forth in the Accusation,
17 cause exists to discipline his California physician's and surgeon's certificate pursuant to the
18 California Business and Professions Code. Respondent wishes to surrender his California license
19 at this time.

20 8. Pursuant to section 2224(b) of the Business and Professions Code, this
21 Stipulation for Surrender of License shall be subject to the approval of the Board. Respondent
22 understands and agrees that the Medical Board's staff and counsel for Complainant may
23 communicate directly with the Board regarding this Stipulation, without notice to or participation
24 by Respondent. By signing this Stipulation, Respondent understands and agrees that he may not
25 withdraw his agreement or seek to rescind the Stipulation prior to the time the Board considers
26 and acts upon it. In the event that this Stipulation is rejected for any reason by the Board, it will
27 be of no force or effect for either party. The Board will not be disqualified from further action in
28 this matter by virtue of its consideration of this Stipulation.

1 9. Upon acceptance of this Stipulation by the Board, Respondent understands
2 that he will no longer be permitted to practice as a physician and surgeon in California, and also
3 agrees to surrender and cause to be delivered to the Board any license and wallet certificate in his
4 possession before the effective date of the decision.

5 10. The admissions made by Respondent herein are only for the purposes of
6 this proceeding, or any other proceedings in which the Medical Board or other professional
7 licensing agency is involved, and shall not be admissible in any other criminal or civil
8 proceeding.

9 11. Respondent fully understands and agrees that if he ever files an application
10 for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for
11 reinstatement, and Respondent must comply with all laws, regulations and procedures for
12 reinstatement of a revoked license in effect at the time the petition is filed.

13 12. Respondent understands that he may not petition for reinstatement as a
14 physician and surgeon for a period of two (2) years from the effective date of his surrender.
15 Information gathered in connection with Accusation number 16-2011-213165 may be considered
16 by the Board in determining whether or not to grant the petition for reinstatement. For the
17 purposes of the reinstatement hearing, the allegations contained in Accusation number 16-2011-
18 213165 shall be deemed to be admitted by Respondent, and Respondent waives any and all
19 defenses based on a claim of laches or the statute of limitations.

20 13. The parties understand and agree that facsimile or electronic copies of this
21 Stipulated Surrender of License, including facsimile or electronic signatures thereto, shall have
22 the same force and effect as the originals.

23 **ACCEPTANCE**

24 I have carefully read the above Stipulated Surrender of License. I enter into it
25 freely and voluntarily and with full knowledge of its force and effect, do hereby surrender my
26 Physician and Surgeon's Certificate Number A95344 to the Medical Board of California, for its
27 formal acceptance. By signing this Stipulated Surrender of License, I recognize that upon its
28 formal acceptance by the Board, I will lose all rights and privileges to practice as a physician and

1 surgeon in the State of California and I also will cause to be delivered to the Board any license
2 and wallet certificate in my possession before the effective date of the decision.

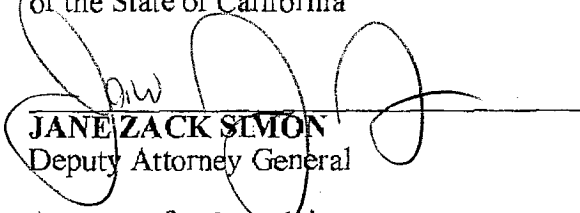
3 DATED: 1/31/2012

4 
5 **JAVIER PONCE ESCALERA, M.D.**
6 Respondent

7 **ENDORSEMENT**

8
9 The foregoing Stipulated Surrender of License is hereby respectfully submitted for
10 consideration by the Medical Board of California.

11 DATED: 1/31/2012

12
13 KAMALA D. HARRIS, Attorney General
14 of the State of California
15 
16 **JANE ZACK SIMON**
17 Deputy Attorney General
18 Attorneys for Complainant

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Exhibit A

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON
Deputy Attorney General [SBN 116564]
4 455 Golden Gate Avenue, Suite 11000
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6 E-mail: Janezack.simon@doj.ca.gov
Attorneys for Complainant
7 Medical Board of California

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO APRIL 14 2011
BY: K. MONTALBANO ANALYST

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

12 Case No. 16-2011-213165

13 In the Matter of the Accusation Against:

14 **JAVIER PONCE ESCALERA, M.D.**
15 LAC+USC Dept of Psychiatry
2020 Zonal Avenue IRD-708
16 Los Angeles, CA 90033

ACCUSATION

17 Physician's and Surgeon's
18 Certificate No. A95344

19 Respondent.

20 The Complainant alleges:

21 1. Complainant Linda K. Whitney is the Executive Director of the Medical
22 Board of California, Department of Consumer Affairs, and brings this Accusation solely in her
23 official capacity.

24 2. On May 5, 2006, Physician's and Surgeon's Certificate
25 No. A95344 was issued by the Medical Board of California to Javier Ponce Escalera, M.D.
26 ("respondent.") The certificate expired on October 31, 2007, and was SUSPENDED on March
27 29, 2011 pursuant to Business and Professions Code section 2310(a).
28

JURISDICTION

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2 3. This Accusation is brought before the Medical Board of California¹, (the
3 “Board”) under the authority of the following sections of the California Business and Professions
4 Code (“Code”) and/or other relevant statutory enactment:

5 A. Section 2227 of the Code provides in part that the Board may
6 revoke, suspend for a period not to exceed one year, or place on probation, the license of
7 any licensee who has been found guilty under the Medical Practice Act, and may recover
8 the costs of probation monitoring.

9 B. Section 2305 of the Code provides, in part, that the revocation,
10 suspension, or other discipline, restriction or limitation imposed by another state upon a
11 license to practice medicine issued by that state, that would have been grounds for
12 discipline in California under the Medical Practice Act, constitutes grounds for discipline
13 for unprofessional conduct.

14 C. Section 141 of the Code provides:

15
16 “(a) For any licensee holding a license issued by a board under
17 the jurisdiction of a department, a disciplinary action taken by another state, by
18 any agency of the federal government, or by another country for any act
19 substantially related to the practice regulated by the California license, may be
20 ground for disciplinary action by the respective state licensing board. A certified
21 copy of the record of the disciplinary action taken against the licensee by another
22 state, an agency of the federal government, or by another country shall be
23 conclusive evidence of the events related therein.

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

28 D. Section 2234 provides that the Board shall take Action against any
29 licensee who is charged with unprofessional conduct.

30 E. Section 2236 of the Code provides that the conviction of any

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37 ¹. The term “Board” means the Medical Board of California; “Division of Medical
38 Quality” shall also be deemed to refer to the Board.

1 offense substantially related to the qualifications, functions, or duties of a
2 physician and surgeon constitutes unprofessional conduct.

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Discipline, Restriction, or Limitation Imposed by Another State)

5 4. On February 4, 2011, the Texas Medical Board issued an Agreed Order of
6 Revocation of respondent's license to practice medicine in the State of Texas. The Agreed Order
7 of Revocation includes factual findings that respondent, a 36 year old psychiatrist, entered a
8 guilty plea to charges of felony aggravated assault with a deadly weapon on October 22, 2009.
9 Respondent was initially placed on four years of deferred adjudication with conditions of
10 community supervision (probation.) On February 10, 2010, respondent admitted that he violated
11 a condition of his criminal probation by coming into "contact with injurious or vicious habits by
12 using and coming in contact with an alcoholic beverage." His probation was revoked and the
13 criminal court issued a Judgment Adjudicating Guilt on the felony, resulting in a final conviction.
14 Respondent is incarcerated with a projected release date of January 2012. The Texas Medical
15 Board also found that respondent engaged in the practice of medicine during a period when his
16 license was in delinquent status, that he failed to notify the Texas board of the criminal charges,
17 and failed to update his address with the Texas board. The Texas Board also found that
18 respondent's use of drugs or alcohol in an intemperate manner that could endanger a patient's life
19 was a further basis for license discipline. A true and correct copy of the Agreed Order of
20 Revocation issued by the Texas Medical Board is attached as Exhibit A.

21 5. Respondent's conduct and the action of the Texas Medical Board as set
22 forth in paragraph 4, above, constitute unprofessional conduct within the meaning of section 2305
23 and conduct subject to discipline within the meaning of section 141(a).

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Criminal Conviction)

26 6. On October 22, 2009, respondent entered a guilty plea in Harris County,
27 Texas, to charges of felony aggravated assault with a deadly weapon. Respondent was initially
28

1 placed on four years of deferred adjudication with conditions of community supervision
2 (probation.) On February 10, 2010, respondent admitted that he violated a condition of his
3 criminal probation by coming into "contact with injurious or vicious habits by using and coming
4 in contact with an alcoholic beverage." His probation was revoked and the criminal court issued
5 a Judgment Adjudicating Guilt on the felony, resulting in a final conviction. Respondent is
6 incarcerated with a projected release date of January 2012.

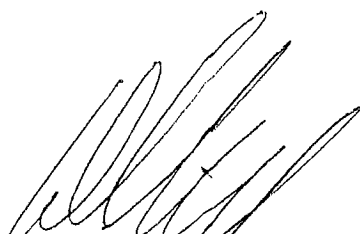
7 7. The foregoing constitutes the conviction of a crime substantially related to
8 the qualifications, functions, or duties of a physician and surgeon, and is cause for discipline
9 pursuant to Business and Professions Code sections 2234 and/or 2236.

10 PRAYER

11 **WHEREFORE**, the complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Board issue a decision:

- 13 1. Revoking or suspending Physician's and Surgeon's Certificate Number
14 A95344 heretofore issued to respondent Javier Ponce Escalera, M.D.;
- 15 2. Revoking, suspending or denying approval of the respondent's authority to
16 supervise physician assistants;
- 17 3. Ordering respondent, if placed on probation, to pay the costs probation
18 monitoring; and
- 19 4. Taking such other and further action as the Board deems necessary and
20 proper.
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22
23 DATED: April 14, 2011

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25 
26 LINDA K. WHITNEY
27 Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California

Complainant

Exhibit A

LICENSE NO. M-7169

IN THE MATTER OF
THE LICENSE OF
JAVIER P. ESCALERA, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER OF REVOCATION

On the 4TH day of FEBRUARY, 2011, came on to be heard before the Texas Medical Board ("Board"), duly in session, the matter of the license of Javier P. Escalera, M.D., ("Respondent").

By the signature of the Respondent on this Order, Respondent waives the right to appear at an Informal Show Compliance Proceeding and Settlement Conference pursuant to Section 164.004, Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code ("Act") and Board Rule 187.18 and all rights pursuant to Sections 2001.051 and 2001.054, Texas Government Code, including, but not limited to, the right to notice and hearing, and instead agrees to the entry of this Order pursuant to Section 164.0025 of the Act and Board Rule 187.14. Joseph M. Tabaracci represented Board staff.

With the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order of Revocation.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Act or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. M-7169. Respondent was originally issued this license to practice medicine in Texas on August 24, 2007. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of psychiatry. Respondent is not board-certified.
4. Respondent is 36 years of age.

5. Respondent has received a prior disciplinary order from the Board. On May 28, 2009, the Board entered a ministerial Order Imposing Administrative Penalty which assessed a \$500 administrative penalty, based on Respondent's failure to timely update his contact address information with the Board.

6. On October 22, 2009, Respondent entered a guilty plea in Harris County, Texas, for a 2nd degree felony charge of Aggravated Assault with a Deadly Weapon, which resulted in Respondent being placed on four years of deferred adjudication with conditions of community supervision (probation) and a \$300 fine.

7. On February 10, 2010, Respondent entered a plea of "true" to a charge that he had violated a condition of his probation, namely, by coming into "contact with injurious or vicious habits by using and coming in contact with an alcoholic beverage." Respondent's probation was revoked and the court issued a Judgment Adjudicating Guilt on the 2nd degree felony, resulting in a final conviction for which Respondent was sentenced to two years confinement in the Texas Department of Criminal Justice (TDJC) and a \$300 fine.

8. Respondent is currently incarcerated in TDCJ's Smith Unit in LaMesa, Texas, and has a projected release date of January 7, 2012.

9. Respondent has failed to notify the Board of any information related to the felony criminal charge for which he is currently incarcerated.

10. Respondent's Physician Profile on file with the Board currently shows a practice address at 5500 Guhn Road in Houston. Respondent has not worked there for at least several months and has failed to update his change of contact address information with the Board.

11. On August 31, 2009, Respondent's Texas medical license expired. On September 30, 2009, the registration was placed in delinquent status, after which Respondent renewed his license on November 13, 2009. During the period September 30, 2009 through November 12, 2009, when Respondent was *de facto* unlicensed, he continued to engage in the practice of medicine when he wrote four Schedule II and three Schedule III - V prescriptions.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(2) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's conviction of a felony or a crime of a lesser degree that involves moral turpitude.

3. Section 156.008(a) provides that practicing medicine after the expiration of the 30-day grace period under Section 156.004, prior to renewal, has the same effect as practicing medicine without a license.

4. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically Board Rules: 166.1(d) a physician shall notify the Board of a change of mailing address within 30 days of such change; and 173.3(d) a physician shall report to the Board within 30 days of the event: (1) any change of address; (2) incarceration in a state or federal penitentiary; (3) an initial conviction, final conviction, or placement on deferred adjudication, community supervision, or deferred disposition for: (a) a felony;

5. Section 164.052(a)(4) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent using alcohol or drugs in an intemperate manner that could endanger a patient's life.

6. Section 164.057 of the Act requires the Board to suspend or revoke Respondent's license based on Respondent's conviction of certain offenses described therein.

7. Respondent may apply for reinstatement pursuant to Board Rules and Statutes, including but not limited to 164.151, 164.152, Board Rule 167.1 and 187.73.

8. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

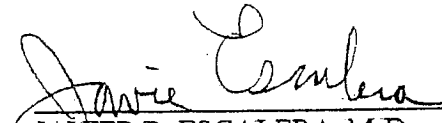
1. Respondent's license is revoked as of the date of entry of this Order.
2. Respondent shall cease and desist from practicing medicine.
3. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute a criminal offense.
4. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, JAVIER P. ESCALERA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING VOLUNTARY REVOCATION. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.


DATED: 10 - 29 -, 2010.



JAVIER P. ESCALERA, M.D.
Respondent

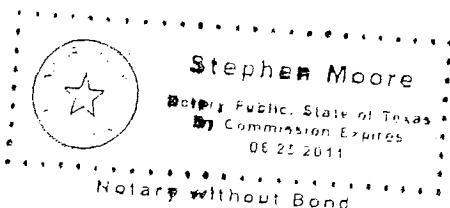
STATE OF TEXAS §
 §
COUNTY OF DAWSON §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 29 day of OCTOBER, 2010.



Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
4TH day of FEBRUARY, 2011.

Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board

STATE OF TEXAS
COUNTY OF TRAVIS

I, Bonnie Kaduka, certify that I am an official
assistant custodian of records for the Texas Medical Board
and that this is a true and correct copy of the original, as it
appears on file in this office.

Witness my official hand and seal of the Board,

this 24 day of Feb, 2011
Bonnie Kaduka
Assistant Custodian of Records