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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF FRESNO**

9 ENRAQUITA LOPEZ, M.D., an) **Case No.:**
10 individual,)
11)
11 Petitioner,) **VERIFIED PETITION FOR WRIT OF**
12) **MANDATE**
12 v.)
13)
13 MEDICAL BOARD OF)
14 CALIFORNIA, a California State)
14 Agency; OFFICE OF)
15 ADMINISTRATIVE HEARINGS, a)
15 California State Agency,)
16)
16 Respondent.)
17)

18
19 COMES NOW Petitioner ENRAQUITA LOPEZ, M.D., an individual (“Petitioner” and/or
20 “Dr. Lopez”), and alleges against Respondent MEDICAL BOARD OF CALIFORNIA, a
21 California State Agency, (“Medical Board”) and OFFICE OF ADMINISTRATIVE HEARINGS,
22 a California State Agency, (“Administrative Law Judge”) and each of them (collectively,
23 “Respondents”) as follows:

24 1. Petitioner Dr. Lopez is now and at all times herein mentioned an individual,
25 residing in the County of Fresno, California. Dr. Lopez is now and at all times herein has practiced
26 medicine in the County of Fresno and the County of Alameda, State of California. At all times
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1 herein mentioned Dr. Lopez has been a medical doctor licensed by the Medical Board to practice
2 medicine in the State of California.

3 2. Petitioner is informed and believes, and thereon alleges, Respondent Medical Board
4 is now and at all times mentioned herein was a public entity and agency sub-division of California
5 having the lawful authority to license and discipline physicians, surgeons, and other medical
6 professionals engaged in the practice of medicine in the State of California.

7 3. Petitioner is informed and believes, and thereon alleges, Respondent
8 Administrative Law Judge is now and at all times mentioned herein was a public entity and agency
9 sub-division of California having the lawful authority to hear and decide administrative actions
10 brought by California state agencies under the laws and regulations of the State of California.

11 4. Under Section 125.9 of the Business and Professions Code the Medical Board has
12 the discretion to issue a licensee "a citation which may contain an order of abatement or an order
13 to pay an administrative fine assessed by the board, bureau, or commission where the licensee is
14 in violation of the applicable licensing act or any regulation adopted pursuant thereto." "Except as
15 otherwise provided by law, the board may take action against all persons guilty of violating this
16 chapter." (Bus. & Prof. Code, § 2220.) Sections 1364.10 and 1364.11 of the California Code of
17 Regulations allow the Medical Board to issue citations when a licensee when a fine is levied or an
18 order of abatement is issued. Section 2272 of the Business and Professions Code allows the
19 Medical Board to take action against licensees for "advertising of a practice of medicine in which
20 the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional
21 conduct." Pursuant to California Code of Regulation 1364.14 and Section 125.9 of the Business
22 and Professions Code the licensee is entitled to an informal conference with the Medical Board
23 official regarding the acts charged in the citation and an official hearing pursuant to Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
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1 5. On March 21, 2019 the Medical Board issued its citation order against Dr. Lopez
2 for failure “to use your name as licensed by the Board in the advertisement of the practice of
3 medicine.” On April 1, 2019 Dr. Lopez notified the Medical Board of her requests for both an
4 informal telephone conference and an official hearing. The informal telephone conference was
5 held May 16, 2019. May 24, 2019, the Board notified Dr. Lopez, “upon conclusion of the meeting,
6 it was determined the citation will stand as issued.” October 7, 2019 the hearing was held to receive
7 evidence on the issue whether Dr. Lopez was in violation of Section 2272 of the Business and
8 Professions Code. Petitioner attending the hearing and was represented by counsel. January 8,
9 2020 Petitioner received the Decision issued by the Administrative Law Judge to become effective
10 at 5:00 p.m. on February 7, 2020 affirming the Medical Board’s citation against Dr. Lopez for
11 violating Section 2272 of the Business and Professions Code. A true and correct copy of the
12 January 8, 2020 Letter with attached Decision is attached hereto **Exhibit 1**, and incorporated
13 herein.
14

15 6. Dr. Lopez filed a Petition for Reconsideration with the Medical Board on January
16 30, 2020. The Medical Board stayed the enforcement of the Decision until February 17, 2020 at
17 5:00 p.m. in response to Dr. Lopez’s Petition for Reconsideration. The Medical Board took no
18 action on the Petition for Reconsideration and issued a Denial by Operation of Law Petition for
19 Reconsideration on February 25, 2020.
20

21 7. The Medical Board’s and Administrative Law Judge’s Decision is invalid for the
22 following reasons:

23 a. The Medical Board failed to follow California Code of Regulations, Title
24 16, section 1364.14 and is thus prohibited from moving forward with any disciplinary action
25 against Dr. Lopez. The Medical Board official failed to “state in writing the reasons for his or her
26 action” as required by Regulation 1364.14. This is in direct contradiction to the Administrative
27 Law Judge’s findings in the Decision.
28

1 b. The Decision disregards the rules of statutory interpretation. “Any
2 advertising of the practice of medicine in which the licensee fails to **use his or her own name** or
3 approved fictitious name constitutes unprofessional conduct.” (Bus. & Prof. Code, § 2272
4 [Emphasis added].) The Decision fails to construe the plain meaning of the statute as required by
5 law.

6 c. The Decision relies on *Lin v. Medical Board of California* (1977) 52
7 Cal.App.4th 39 (“*Lin*”) to affirm the Medical Board’s citation. However, all *Lin* requires is notice
8 to the Medical Board, which the Medical Board has had since 2005. The *Lin* Court holds “doctors
9 must practice under their “own” or licensed names absent **board authorization** to do otherwise”
10 and goes on to state “[b]y practicing under their new names **without notifying the board**, the Lins
11 obscured their licensed identities and, in some respects, placed themselves beyond the board’s
12 regulatory system.” (*Lin, supra*, 52 Cal.App.4th at 43 [Emphasis added].)

14 i. After receiving the Medical Board’s November 15, 2005 letter
15 notifying Dr. Lopez of the use of the name “Quita”, Dr. Lopez
16 responded to the Medical Board stating:

17 “ ... In response to your other concern about using
18 derivatives of ones name, Quita Lopez MD is a shortened
19 version of Enraquita Lopez MD. I have always used the
20 shortened version of my name and have seen other
21 physicians do the same in their advertising. For example,
Bob is used instead of Robert and Liz is used instead of
Elizabeth.

22 If you have any further questions place feel free to call or
23 write.”

24 Thereafter the Medical Board was on notice, notified, that Dr. Lopez
25 would be practicing medicine under her own name “Quita”. Thus,
26 the notification requirement set forth in *Lin* was satisfied.

27 ii. The Medical Board after learning of Dr. Lopez’s use of her own
28 name “Quita” in 2005 took no action until 2018. The Medical

1 Board's inaction regarding Dr. Lopez's use of her own name
2 "Quita" is authorization to do so. "Whenever a party has, by his own
3 statement or conduct, intentionally and deliberately led another to
4 believe a particular thing true and to act upon such belief, he is not,
5 in any litigation arising out of such statement or conduct, permitted
6 to contradict it." (Evid. Code, § 623.)
7

8 d. The rule of lenity prohibits the Decision's interpretation of Section 2272 of
9 the Business and Professions Code. Any ambiguity as to the meaning of "his or her own name"
10 must be construed against the issuance of any penalties.

11 e. The Medical Board has waived and is estopped from asserting Business and
12 Professions Code § 2272 against Dr. Lopez. The Decision fails to discuss Dr. Lopez's reliance on
13 the Medical Board's 12 plus years of silence regarding Dr. Lopez's known use of the name
14 "Quita". The undisputed facts of this matter are as follows:

- 15 i. The Medical Board was aware of the *Lin* case in 2005 (*Lin* was decided in
16 1997);
- 17 ii. In November 2005 the Medical Board knew and was on notice the name
18 "Quita" was being used in advertising;
- 19 iii. Dr. Lopez responded to the Medical Board's November 15, 2005 letter
20 advising she was using "Quita" in advertising;
- 21 iv. The Board knew in 2005 it had the right to authorize usage of the name
22 "Quita" in advertising; and
- 23 v. The Board in 2005 authorized usage of the name "Quita" in advertising by
24 its conduct then and for the next 12 plus years.
25

26 Thus, the Medical Board has been apprised of the fact Dr. Lopez has been using the name "Quita"
27 since 2005. Dr. Lopez wrote the Medical Board in 2005 informing it she was using the name
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1 "Quita", a shortened derivative of her full first name "Enraquita", the Medical Board went silent
2 for 12 plus years allowing Dr. Lopez to use the name "Quita". Dr. Lopez was entitled to act upon
3 the Medical Board's 12 plus year silence on this matter as the governing body for the practice of
4 medicine in the State of California. Dr. Lopez was ignorant that her 2005 letter notifying the
5 Medical Board of her use of "Quita" was not deemed sufficient by the Medical Board. Dr. Lopez
6 relied upon the Medical Board's 12 plus years of silence regarding the use of "Quita" to her injury
7 of citation to her permanent file and a monetary fine.

8
9 8. If the Medical Board's Decision is not stayed pending the judgment of this Court,
10 Petitioner will be irreparably harmed, in that Dr. Lopez will either have to have to disobey the
11 Decision and not pay the fine and not change the advertising of her medical practice to remove the
12 use of her name "Quita" thus opening herself up to further Medical Board administrative action,
13 or Dr. Lopez will be forced to comply with the Decision by paying the fine and changing her
14 advertising material to remove the use of her name "Quita". By not issuing a stay the Court would
15 be forcing dr. Lopez to face further administrative actions or comply with the Decision now being
16 challenged which would disrupt the status quo and force Dr. Lopez to expend money.

17
18 9. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary
19 course of law.

20 WHEREFORE, Petitioner prays the Court for judgment as follows:

- 21 1. For alternative and peremptory writs of mandate directing Respondents to set aside
22 its Decision dated January 8, 2020 affirming the Medical Board's citation assessing
23 Petitioner a fine of \$350 and order of abatement;
- 24 2. For an order restraining Respondents from giving effect to its Decision date January
25 8, 2020 assessing Petitioner a fine of \$350 and order of abatement until further
26 order of the Court, and to show cause why operation of the Decision should not be
27 stayed pending the Court's judgment in this proceeding;

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- 3. For costs of the suit; and
- 4. For such other and further relief as the Court deems just and proper.

DATED: March 18, 2020

GEORGESON LAW OFFICES

By 

Robert J. Willis,
Attorneys for Respondent, ENRAQUITA
LOPEZ, M.D.

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VERIFICATION

I, ENRAQUITA LOPEZ, M.D., am the Petitioner in the above-entitled proceeding. I have read the foregoing Petition and know its contents. I declare under the penalty of perjury that the same is true and correct to my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on March 18, 2020 in the County of Fresno, State of California.

Enraquita Lopez MD
ENRAQUITA LOPEZ, M.D.

Exhibit 1



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

Enforcement Program

2005 Evergreen Street, Suite 1200

Sacramento, CA 95815-5401

Phone: (916) 263-2525

Fax: (916) 263-2473

www.mbc.ca.gov

Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

January 8, 2020

Enraquita Lopez, M.D.
6081 North First Ste. 101
Fresno, CA 93710

Dear Dr. Lopez:

Enclosed is a copy of the Decision in the matter of the Citation issued to you. Please note that this Decision shall become effective at 5:00 p.m. on February 7, 2020.

If you wish to file a petition for reconsideration pursuant to Government Code section 11521, the petition must be received prior to the effective date of the decision. However, please be aware the Board needs approximately one week to process a petition for reconsideration. Attached is a copy of the Government Code section for your review. **Please note that reconsideration is NOT available to you if you entered into a stipulated decision with the Board.**

Sincerely,

Sharlene Smith for Marco Armas

Attachment

CERTIFIED MAIL

cc: C. Russell Georgeson, Attorney at Law
Sarah J. Jacobs, Deputy Attorney General, Health Quality Enforcement-Fresno
John E. DeCure, Administrative Law Judge, Office of Administrative Hearings

MBC Case # 8002018048602

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

In the Matter of the Citation Against:)
)

Enraquita Lopez, M.D.)

Case No. 8002018048602)

OAH No. 2019070170)

Respondent)
_____)

ORDER OF DECISION

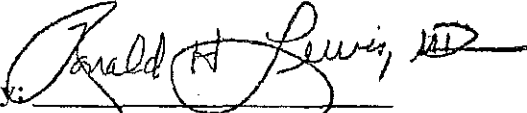
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Consumer Affairs, Medical Board of California, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on February 7, 2020.

IT IS SO ORDERED January 8, 2020.

MEDICAL BOARD OF CALIFORNIA

By: 

Ronald H. Lewis, M.D. Chair
Panel A

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

In the Matter of the Citation and Fine against:

ENRAQUITA LOPEZ, M.D., Respondent

Agency Case No. 800-2018-048602

OAH No. 2019070170

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 7, 2019, in Fresno, California.

Sarah J. Jacobs, Deputy Attorney General, represented the complainant, Medical Board of California, Department of Consumer Affairs (board).

C. Russell Georgeson, Attorney at Law, represented Enraquita Lopez, M.D. (respondent), who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 7, 2019.

FACTUAL FINDINGS

Background and Procedural History

1. On September 16, 1985, the board issued Physician's and Surgeon's Certificate No. G 56031 to respondent under the name "Enraquita Lopez." The certificate is renewed and current with an expiration date of June 30, 2021.

The board's certified history of licensure established that respondent's official name of record with the board is, and has always been, "Enraquita Lopez."

2. On March 21, 2019, the board issued Citation Order No. 8002018048602 (citation) to respondent for her alleged violation of Business and Professions Code (Code) section 2272, which states:

Any advertising of the practice of medicine in which the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional conduct.

The citation alleged no further facts specific to the violation, but included an Order of Abatement directing respondent to correct or delete any advertising that does not comply with law within 30 days of receipt of the citation. In addition, the citation imposed an administrative fine of \$350, to be paid within 30 days of receipt of the citation.

At hearing, it was undisputed that the citation was issued against respondent based on her use, in advertising herself as a practicing California physician, of the name "Quita Lopez" as a derivative of the name "Enraquita Lopez." It was also

undisputed that respondent's use of the name "Quita Lopez" had no fraudulent purpose.

3. Respondent timely requested an informal conference with the board, and an administrative hearing to contest the citation. The board met with respondent at an informal conference on May 16, 2019, but the matter was not resolved. Pursuant to California Code of Regulations, title 16 (Regulations), section 1364.14, at the conclusion of the informal conference the board may affirm, modify, or dismiss the citation, and shall serve or mail a copy of its findings to the person cited within 10 days after the informal conference. On May 24, 2019, eight days after the informal conference, the board sent respondent a letter indicating that its findings following the conference were to uphold the citation and fine. All jurisdictional requirements have been met.

4. At the commencement of hearing, respondent moved to dismiss the citation due to "lack of evidence," and sought sanctions against the board, asking that it be prohibited from presenting evidence at hearing. In addition, respondent alleged that the board violated Regulations section 1364.14, subdivision (b), by failing to send its letter to respondent following the conference within 10 days as required; yet, at hearing, respondent admitted the letter was sent eight days after the conference. Respondent further faulted the board's after-conference letter for failing to cite the board's reasons for upholding the citation, despite conceding that the board and respondent have been in disagreement over respondent's use of the derivative "Quita Lopez" since at least 2005, and that this was the sole violation at issue in the citation. Lastly, respondent argued that the board "waived" its right to proceed against her in the instant citation because it failed to take formal action against her in 2005. These contentions, and respondent's other various assertions of board "malfeasance," were

without merit and rejected; accordingly, her motions to dismiss the citation and for sanctions were denied.

Respondent's Use of "Quita Lopez"

5. The facts underlying the citation are undisputed. Enraquita is respondent's full first name, but she has used the derivative "Quita" "almost all [her] life." She has also held herself out as "Quita Lopez" in advertising her medical practice, despite the fact that her official physician and surgeon's name pursuant to her board licensure is, and always has been, "Enraquita Lopez."

6. The board contacted respondent regarding this name-usage disparity approximately 14 years ago. On November 15, 2005, a board consumer services analyst sent a letter, dated the same, to respondent addressing her usage of the name Quita Lopez, M.D., stating, in relevant part:

In checking our records we have no one licensed by this name. When names, other than those on the official licensing record are used, some unintended consequences may result. For instance, when a physician uses a derivative of their name which is different than that which is shown on the license, we may be unable to identify that individual as a properly licensed physician. As you may be aware, the Board is contacted by hospitals, insurance companies, and the public at large to provide verification that physicians are properly licensed. While every effort is made to identify the physician, if a derivative of the physician's name is used, the Board may fail to verify that there is a record of a physician

licensed under that name. In such an instance, the physician would be disadvantaged by the confusion that results.

Similarly, if a complaint is submitted, Board staff may expend valuable time and resources confirming the correct identity of the physician named. I hope you recognize that these are important reasons for the policies established by the Board regarding licensee names and styles.

The letter went on to advise respondent that she could apply for a fictitious name permit if she chose to advertise her business under a name – Quita Lopez – other than the official name under which she was licensed. As a courtesy, the board provided a copy of a fictitious name permit application with the letter.

7. Shortly after she received the board's November 15, 2005 letter, respondent sent an undated letter to the board in response, stating, in relevant part:

Quita Lopez MD is a shortened version of Enraquita Lopez MD. I have always used the shortened version of my name and have seen other physicians do the same in their advertising. For example, Bob is used instead of Robert and Liz is used instead of Elizabeth

Following this exchange, respondent did not take any action to update her official licensed name with the board.

8. Respondent testified that when, years later in 2018, the board contacted her again regarding the identical name-usage issue, she felt she was being "hassled," and believed the board was being "racist" toward her. On October 31, 2018, she wrote a letter to the board reiterating that she had always used Quita as the shortened

version of her first name, and that she was aware of other physicians using shortened first names on their websites. She further interpreted Code section 2272 as requiring not that she use her name "exactly as written on my license," but rather, "only that [Quita Lopez] is my name."

9. On November 30, 2018, Dalia Demian, a Staff Services Manager with the board's Central Complaint Unit, sent an email to respondent confirming a telephone call between them earlier that day, stating:

Thank you for returning my telephone call today. I do understand that it is your own name that you are using. As I mentioned, if a consumer attempts to verify your medical license on the Board's website, they will not be able to view your license since your first name you are using does not match your medical license. As discussed on the call today, you agreed to update your website, business cards, and any future advertisement to show your complete first name and indicate what you go by between parentheses[:] "Enraquita (Quita) Lopez." Please complete these corrections and provide verification to support you are now in compliance by December 31, 2018. If verification of the compliance is not received, a citation and fine will issue.

10. At hearing, respondent recalled having a phone conversation with Ms. Demian in 2018 and discussing the concerns Ms. Demian raised in the board's follow-up email. Respondent also recalled agreeing to update her advertisements to show her complete name as Ms. Demian had advised. Respondent admitted she did not make any such corrections.

Code section 2272 and Unprofessional Conduct

11. Code section 2272 instructs that a physician who advertises in the practice of medicine commits unprofessional conduct if the physician fails to use his or her own name or approved fictitious name. Respondent argues that her use of "Quita" Lopez is the use of her own name, and that the board's awareness of this fact and lack of enforcement follow-up in 2005 was a "waiver" of any future enforcement. This argument has no legal support and is rejected.

12. Respondent further asserts that the board merely needed to make "a clerical alteration in its records of a fact known to it over 12 years," and that the board's "unwillingness" to do so is "[a]ll that exists" as the basis for the current dispute. Here, respondent wrongly places the burden of declaring respondent's official name upon the board. There is no evidence that a matter as serious as declaring a professional licensee's official name would be left to the regulatory agency to make a "clerical alteration" establishing that precise name; that responsibility plainly falls on the individual. In this respect, the board's advisements toward respondent were wholly consistent. Not once did the board indicate that it could, or would, make name changes, alterations, or updates on her behalf on a ministerial basis. Conversely, the plain-stated thrust of the board's advisements to respondent was that 1) she was violating the law regarding her derivative name-usage, and 2) she needed to take action to correct this problem by updating her licensed name for the record. In 2005, the board explicitly encouraged respondent to take such action by providing her with a blank fictitious name permit application; then in 2018, Ms. Demian encouraged her to "[p]lease complete these corrections." For these reasons, respondent's contentions that the board failed to take action are not persuasive.

13. Respondent provided no evidence to support her claims that the board was harassing her. Instead, the evidence established that she was consistently treated with deference and respect, and that the official-name issue at hand was substantive board business. Although respondent used the descriptor "racist" in her testimony to characterize the board's actions, she cited no evidence to establish such a claim.

14. In both the board's and respondent's trial briefs, the parties cited to *Lin v. Medical Board of California* (1977) 52 Cal.App.4th 39. In *Lin*, two California physicians were licensed to practice under the names Cheg-Wen Lin and Tein Lin, but later changed their names, through non-fraudulent general usage, to "Charles" Cheng-Wen Lin and "Cecilia" Tein Lin; they then advertised and wrote prescriptions using these latter, altered names. (*Id.* at p. 41.) However, neither physician updated their licensed names with the board. Later, when the board learned of this lapse, it issued citations against both physicians for violating Code section 2272. On appeal, the Lins argued that section 2272 only required the use of one's "own name," rather than expressly requiring the use of one's licensed name. (*Id.* at p. 41.) The court rejected this argument:

The issue, both below and on appeal, is a legal one: Does section 2272's requirement to use one's "own" name require the use of the name under which the physician was licensed? We conclude it must. Any other holding would render the statutory licensing scheme unenforceable.

(*Id.* at p. 43.)

15. Respondent argues that the *Lin* court reached this holding "without authority," that the Lins needed only to notify the board that they were using the

altered names, and that, concomitantly, respondent needed only to inform the board that she was using "Quita" rather than her licensed name. On its face, this interpretation would serve to nullify the meaning and purpose of Code section 2272, which is obvious. The board's primary purpose is public protection. The Legislature tasked the board with creating and maintaining a central file accessible by the name of each licensed physician. (Code § 800 et seq.) Both the board in its regulatory capacity, and members of the public as consumers, rely on that central file to determine whether a person holding herself out as a physician is a bona fide physician licensed to practice. When a physician is licensed under one name but uses another, the primary purpose of maintaining this information is frustrated.

16. In respondent's case, a person looking up "Quita Lopez" would find nothing. Should that person further attempt to find respondent's physician information by entering only the surname Lopez, the person would be confronted with *several hundred* other entries of physicians also named Lopez. It is impossible to surmise whether, after combing through hundreds of names and coming upon "Enraquita Lopez," the average consumer would likely make a connection between "Enraquita" and "Quita."¹ But a reasonable presumption may be made that such extended searching and sleuthing merely to look up a physician's name and licensure status is not what the Legislature wanted; it also makes the board's regulatory work

¹ No evidence was presented at hearing as to whether, or with what frequency, the board investigates other physicians who refer to themselves using common first-name derivatives such as "Bob" or "Liz."

more difficult, and does nothing to serve the consumer. Consequently, respondent's interpretation of the *Lin* case is not persuasive.

17. The board correctly interpreted the *Lin* case as being on point. The board issued the citation and fine due to respondent's insistence on using a different name other than her licensed name, and her failure to update her licensed name on record with the board – an act only she could fulfill. The board correctly followed Code section 2272 in this regard; respondent erred when she did not comply with the statute.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. "Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority." (Code § 2229, subd. (a).)

Burden and Standard of Proof

2. The burden of proof is on complainant to establish that the citation should be affirmed. (Evid. Code, § 500.) The standard of proof applied in a citation proceeding is preponderance of the evidence. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 994; Evid. Code, § 115.)

3. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." [Citations.] (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition

of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Statutory Authority to Issue Citations

4. Code section 125.9, subdivision (a), states, in relevant part:

... any board, bureau, or commission within the department ... may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

Subdivision (b)(3) limits administrative fines assessed in a citation to \$5,000 "for each inspection or each investigation made with respect to the violation," and states that when:

assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

Applicable Regulatory Authority

5. Regulations section 1364.10, subdivision (b), in relevant part, grants a "board official," defined as the executive director or his or her designee, the authority:

... to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician or surgeon ... of the statutes and regulations referred to in Section 1364.11.

Subdivision (c) states:

A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

6. Regulations section 1364.11, subdivisions (b) and (c), provide:

(b) In his or her discretion, a board official may issue a citation under Section 1364.10 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

(c) A citation may include a fine from \$100 to \$2,500.

However, a citation may include a fine up to \$5,000 if one or more of the following circumstances apply:

(1) The cited person has received two or more prior citations for the same or similar violations;

(2) The citation involves multiple violations that demonstrate a willful disregard for the law.

Evaluation

7. Complainant proved by a preponderance of the evidence that Dr. Lopez violated Code section 2272 by advertising with the name "Quita Lopez" when her official licensed name was "Enraquita Lopez." Respondent admitted to the facts underlying the violation.

8. Respondent's attitude during the hearing regarding whether she really needed to comply with Code section 2272 was polite, but imperceptive. As a practicing physician, she was required to follow the law and regulations applicable to her profession. The board made reasonable attempts to bring her into compliance, but respondent rejected these overtures; hence, the citation and fine. When all the evidence is considered, respondent's longstanding resistance to the simple requirement of maintaining the name she uses as a practicing physician as her licensed name was, under the totality of circumstances, perplexing. Accordingly, the Citation Order, including an order of abatement for respondent to correct or delete any advertising that does not comply with California law within 30 days, and the assessment of a \$350 administrative fine, is affirmed.

ORDER

Citation Order No. 800-2018-048602 issued against respondent Enraquita Lopez, M.D., and the assessment of a \$350 administrative fine and Order of Abatement, is affirmed.

DATE: November 4, 2019

DocuSigned by:
John DeCure
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John E. DeCure

Administrative Law Judge

Office of Administrative Hearings

Government Code Section 11521

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

DECLARATION OF SERVICE BY CERTIFIED AND FIRST CLASS MAIL

IN THE MATTER OF THE CITATION AGAINST:

Lopez, Enraquita, M.D.

CITATION No. 8002018048602

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 2005 Evergreen Street, Suite 1200, Sacramento, California 95815. I served a true copy of the attached:

DECISION

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Enraquita Lopez, M.D.
6081 North First Ste. 101
Fresno, CA 93710

70163010000057104933
And First Class Mail

C. Russell Georgeson
Georgeson and Belardinelli
7060 North Fresno Street, Suite 250
Fresno, CA 93720

70163010000057104940

Sarah J. Jacobs
Deputy Attorney General
California Department of Justice
2250 Mariposa Mall, Room 5090
Fresno, CA 93721

FIRST CLASS MAIL

John DeCure
Administrative Law Judge
Office of Administrative Hearings
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

e-File: OAHSecureEFile@dgs.ca.gov

Each said envelope was then, on January 8, 2020, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, either as certified mail or first class U.S. mail with the postage thereon fully prepaid and return receipt requested for the certified mail.

Executed on January 8, 2020, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Sharlene Smith, Declarant

PROOF OF SERVICE
[1013A(3) CCP]

1 **STATE OF CALIFORNIA)**
2 **) SS.**
3 **COUNTY OF FRESNO)**

4 I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is: 7060 N. Fresno Street, Suite 250, Fresno, California.

5 On **March 18, 2020**, I served the foregoing document described as **VERIFIED PETITION FOR WRIT OF MANDATE** on the party/parties named below in said action by placing the original a true copy thereof enclosed in a sealed envelope address as follows:

7 **VIA U.S. MAIL**

8 **Sarah Jacobs, Deputy Attorney General**
9 **California Department of Justice**
10 **Office of the Attorney General**
11 **2550 Mariposa Mall, RM 5090**
12 **Fresno, CA 93721**

7 **VIA E-MAIL & U.S. MAIL**

8 **Marco Armas -- marco.armas@mbc.ca.gov**
9 **Medical Board of California**
10 **2005 Evergreen Street, Suite 1200**
11 **Sacramento, CA 95815-5401**

11 **VIA E-MAIL ONLY**

12 **Enraquita Lopez, M.D.**

13 **BY OVERNIGHT DELIVERY:** I deposited the document in a box or other facility regularly maintained by UPS and in an envelope or package designated by the UPS with delivery fees paid or provided for.

14 **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

15 **VIA ELECTRONIC MAIL:** I caused a true and correct scanned image (.PDF file) to be transmitted via electronic mail to the above address(es) indicated above.

16 **Executed on March 18, 2020 at Fresno, California.**

17 **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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Kellie Dundore