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6 **BEFORE THE VICTIM COMPENSATION BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
8

9 In the Matter of the Claim of:

**Board's Written Decision  
(Penal Code § 4900)**

10 **Luis Galicia**

11 **I. INTRODUCTION**

12 On July 3, 2012, Luis Galicia (Galicia) submitted an application for compensation as an  
13 erroneously convicted person to the California Victim Compensation Board (CalVCB). The  
14 application was based upon Galicia's two convictions for lewdly touching a child, which were both  
15 vacated during a habeas proceeding before the San Diego County Superior Court, after Galicia  
16 served 1,068 days imprisonment. A hearing was conducted on May 26, 2015, by CalVCB Hearing  
17 Officer Jasmine Turner-Bond. Counsel John T. Richards appeared on behalf of Galicia, who also  
18 appeared and testified. Deputy Attorney General Heather Gimle appeared on behalf of the Attorney  
19 General. On February 1, 2016, the hearing officer issued a Proposed Decision recommending  
20 compensation be approved in the amount of \$106,800.

21 The Board unanimously voted to reject the Proposed Decision at the Board Meeting on  
22 February 18, 2016. The Board determined that Galicia had failed to satisfy his burden of proving by  
23 a preponderance of the evidence that he was actually innocent. The Board's determination was  
24 memorialized in a three-page summary entitled "Board Decision of February 18, 2016" (Board  
25 Decision).

26 Galicia challenged the Board Decision by filing a petition for writ of mandate in the San Diego  
27 County Superior Court. On August 25, 2017, the superior court found that the Board Decision was  
28 deficient for failing to "articulate findings or the factual basis" and, therefore, remanded "in order for  
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1 the Board to set forth findings supporting its determination.” Thereafter, at the Board Meeting on  
2 October 19, 2017, the Board articulated four factual findings in a document entitled “Findings  
3 Supporting the Board’s Decision” (Board Findings).

4 On November 30, 2017, the superior court found the Board Decision and Board Findings to  
5 be inadequate under *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11  
6 Cal.3d 506, 515, which requires “the agency which renders the challenged decision [to] set forth  
7 findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” The  
8 superior court, therefore, directed the Board “to support its decision with findings from the evidence  
9 it considered in the previous decision in compliance with the *Topanga* requirements.”

10 Consequently, this Written Decision, issued pursuant to section 619.2 of Title 2 of the  
11 California Code of Regulations,<sup>1</sup> explains the basis for the Board Decision to deny Galicia’s  
12 application for compensation under Penal Code section 4900.

## 13 II. PROCEDURAL BACKGROUND

14 Galicia was arrested on February 28, 2008, and convicted on December 12, 2008, for two  
15 felony counts of lewdly touching a child, plus a multiple-victim enhancement, and a special finding of  
16 substantial sexual conduct with a minor.<sup>2</sup> On September 18, 2009, Galicia was sentenced under the  
17 One Strike law to concurrent terms of 15 years to life in state prison.<sup>3</sup>

18 Galicia appealed the judgment to the California Court of Appeal, Fourth Appellate District.  
19 On September 27, 2011, while the appeal was still pending, Galicia filed habeas petitions in the  
20 Court of Appeal and San Diego County Superior Court. According to the petitions, newly  
21 discovered evidence undermined the prosecution’s case to such an extent that no reasonable juror  
22 could find him guilty. The San Diego County District Attorney and Attorney General both filed letters  
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25 <sup>1</sup> Cal. Code Regs., tit. 2, § 619.2, subdivision (d), provides that, “If the board does not adopt the  
26 staff recommendation: (1) the board shall make a statement of decision that includes: (A) the  
27 decision made about the application; and (B) the reasons for the decision; and (2) board staff shall  
28 prepare a written decision consistent with the board’s statement of decision.”

29 <sup>2</sup> Pen. Code, § 288, subd. (a) (willful touching of any body part of a child under 14 years old with  
lewd intent); Pen. Code, §§ 667.61, 1203.055.

<sup>3</sup> Pen. Code, § 667.61, subd. (d).

1 of non-opposition. Consequently, on November 22, 2011, the superior court summarily granted  
2 habeas relief, without issuing any factual findings or credibility determinations.

3 At a status conference on February 22, 2012, the district attorney declined to retry Galicia.  
4 Galicia was released from custody immediately afterwards. Galicia did not seek a finding of factual  
5 innocence from the superior court.

6 Instead, on July 3, 2012, Galicia applied to CalVCB for compensation as an erroneously  
7 convicted offender under Penal Code section 4900. The Attorney General opposed the application  
8 in a Response Letter submitted on August 14, 2014, and a hearing ensued on May 26, 2015.  
9 Although the Proposed Decision by Hearing Officer Turner-Bond recommended granting  
10 compensation, the Board declined to do so at the Board Meeting on February 18, 2016. By a  
11 unanimous vote, the Board determined that Galicia had failed to prove by a preponderance of the  
12 evidence that he was actually innocent of his convictions for lewdly touching two children.

### 13 **III. FACTUAL SUMMARY**

#### 14 **A. Trial Evidence**

15 On December 21, 2007, 13-year-old A.G. decided to run away from home, where she lived  
16 with her parents and multiple siblings, including her 22-year-old brother Galicia and 7-year-old sister  
17 I.G.<sup>4</sup> After leaving a goodbye note for her family, A.G. went to school, where she was in seventh  
18 grade. A.G.'s mother Federica soon discovered the note and immediately notified the school. The  
19 school located A.G. and sent her to the school counselor.

20 A.G. tearfully confided to the counselor that she did not feel safe at home, which prompted a  
21 sheriff's deputy to join their conversation. A.G. revealed that her older brother Galicia had been  
22 sexually molesting and raping her since she was six years old. She said that the last time Galicia  
23 had raped her was one month earlier on Thanksgiving. A couple weeks later, A.G. finally told  
24 Federica that Galicia had raped her, and Federica took A.G. to Mexico for a pregnancy test. After  
25 these revelations, A.G. was taken into protective custody, along with her younger sister I.G. and 9-  
26 year-old brother.

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28 <sup>4</sup> In light of the nature of the allegations and their young age, both victims are referred to solely by  
29 their initials in order to protect their privacy.

1 A few days later, on December 26, 2007, A.G. detailed the abuse during a forensic interview  
2 conducted by social worker Christian Shultz (Shultz), which was videotaped. A.G. described how  
3 Galicia first molested her when she was six years old. As A.G. explained, "Everything started when I  
4 was six years old. I was a happy little girl, but one day I stayed with my brother." After breaking  
5 down into tears, A.G. continued,

6 "...he pulled me and then he took me to the bedroom. ...And he started taking off all  
7 my clothes and he took his off. Then he started kissing me all [sic] the body and,  
8 then he put his part inside of my part. I was crying and after that he told me that if I  
told anyone that something could happen to me or to my family. That's why I didn't  
say anything because I was afraid that he would do something to my family."<sup>5</sup>

9 Immediately after this incident, A.G.'s vagina was sore and urination was painful. A.G. identified  
10 Galicia as the brother who did this to her.

11 A.G. described similar incidents committed by Galicia over the past seven years. For  
12 instance, Galicia touched her vagina with his hands. He also forced A.G. to touch his penis with her  
13 hands and her mouth. A.G. recalled Galicia ejaculating. Once, while visiting family in Mexico,  
14 Galicia orally copulated A.G. and rectally penetrated her.

15 A.G. told Shultz that Galicia had most recently raped her one month earlier, either on  
16 Thanksgiving or the day before Thanksgiving. A.G. recalled how Galicia summoned her to his  
17 bedroom, closed and eventually locked the door, pushed her onto the bed despite her pleas to  
18 stop, and inserted his penis inside her vagina for 15 minutes.

19 A.G. also told Shultz that, a few days after the last rape, Galicia asked if she was pregnant.  
20 A couple weeks later, A.G. finally told her mother Federica that Galicia had raped her. Two days  
21 later, Federica took A.G. to Mexico to see a doctor. After the doctor pronounced A.G. healthy,  
22 Federica stopped talking to A.G. Federica did not call the police or force Galicia to move out.

23 A.G. added that, the day she finally disclosed the abuse to Federica, she had been caught  
24 by Galicia walking with a boy after school, and Galicia had told Federica that she had a boyfriend.  
25 A.G. denied having a boyfriend.

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27 <sup>5</sup> Transcript of Forensic Interview of A.G. (12/26/07) at pp. 10-11; DVD of Forensic Interview of A.G.  
28 (12/26/07) at 08:04-09-52. This portion of the DVD was shown to the Board at the February 2016  
29 hearing. (CalVCB Board Meeting Transcript (2/18/16) at p. 13.)

1 On December 26, 2007, A.G. underwent a forensic examination conducted by Dr. Mary  
2 Spencer. Dr. Spencer found what she believed to be full transection tears at the five and eight  
3 o'clock positions of A.G.'s hymen. Dr. Spencer photographed A.G.'s hymen to document her  
4 findings.

5 Between January and June 2008, A.G. and I.G. were placed in the foster care of Lucila  
6 Leduc (Leduc). Sometime in late January 2008, A.G. confided to Leduc that she felt guilty for  
7 having revealed the molestation because it had broken up her family. A.G. eventually recanted the  
8 allegations several months later, at least by June 16, 2008, when Leduc told A.G.'s social worker  
9 Betty Saavedra (Saavedra). Previously, A.G. had consistently described the abuse to Saavedra  
10 and to her previous social worker Consuelo Soto (Soto).

11 Meanwhile on April 14, 2008, Schultz interviewed A.G.'s little sister I.G., which was also  
12 videotaped. I.G. repeatedly denied being touched inappropriately by Galicia. However, at one point  
13 when Schultz left the room, I.G. muttered to herself, "It's not my fault. He made me do it."<sup>6</sup>

14 One week later on April 21, 2008, Shultz interviewed I.G. again. This time, I.G. admitted that,  
15 when she was six years old, Galicia had touched her breasts. I.G. added that, on a separate  
16 occasion, Galicia had touched her vagina above her underwear. When Schultz asked I.G. why she  
17 did not say anything earlier, I.G. explained that she was afraid.<sup>7</sup>

18 In December 2008, while testifying at Galicia's criminal trial, A.G. entirely denied the sexual  
19 abuse. A.G. stated that she had lied about being molested by Galicia because she was upset with  
20 him for catching her with a boy and telling her mother about it. A.G. also stated that she had  
21 coerced I.G. into making false allegations against Galicia at the encouragement of her social worker  
22 so that they could return home. A.G. insisted she had a boyfriend.

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24 <sup>6</sup> PD (2/1/16) at p. 14; see also DVD of Forensic Interview of I.G. (4/14/08) at 36:23-36:33.

25 <sup>7</sup> I.G. provided additional details to Schultz that were not included in the Proposed Decision but were  
26 cited in the Attorney General's rebuttal letter to the Board. Specifically, I.G. told Schultz that Galicia  
27 had told her not to tell anyone about the abuse, but she did tell A.G. Also, I.G. told Schultz that she  
28 once saw Galicia fondling A.G. in the kitchen. Shortly after I.G.'s interview, a detective contacted  
29 A.G., and she confirmed that I.G. told her about Galicia's abuse while in foster care. A.G.  
acknowledged that I.G. may have seen Galicia lewdly touching her in the kitchen. (AG Rebuttal  
(11/30/15) at p. 9.)

1 I.G. similarly recanted at trial. I.G. denied that Galicia had ever touched her private parts.  
2 I.G. claimed that she had falsely accused Galicia, at A.G.'s prompting, in order to remain with A.G.  
3 A.G.'s classmate, Gabriela R. (Gabriela) testified at trial.<sup>8</sup> Gabriela recalled that, one day  
4 during seventh grade, A.G. had tearfully confided to her and two other friends that her brother  
5 Galicia had tried to touch her. One of the friends suggested that A.G. tell her mother, but A.G.  
6 responded that her mother would not believe her.<sup>9</sup>

### 7 **B. Galicia's Post-Arrest Confession**

8 Unbeknownst to the jury, Galicia made incriminating statements during a police interrogation  
9 conducted on February 28, 2008. At first, Galicia repeatedly denied lewdly touching A.G. But after  
10 police promised he would receive therapy and his siblings would be returned home to their mother,  
11 Galicia finally admitted to having sexual relations with A.G., twice in the past two years. Galicia  
12 initially insisted that he did not penetrate A.G.'s vagina and only placed his penis "practically  
13 outside" of her vagina.<sup>10</sup> Galicia subsequently acknowledged penetrating A.G.'s vagina but only a  
14 small amount the first time they had sex. Galicia admitted to "full penetration" the second time.<sup>11</sup>  
15 Galicia denied ejaculating either time. Galicia also denied asking A.G. if she was pregnant. Galicia  
16 insisted his actions were not rape because A.G. consented. According to Galicia, A.G. initiated sex  
17 by rubbing her genitals against him and placing his hand under her pants. Galicia denied touching  
18 A.G.'s breasts or kissing A.G.'s mouth. Galicia explained that he had been sexually molested when  
19 he was six years old. Galicia stated that he suffers from a medical condition that makes it difficult to  
20 maintain an erection.

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23 <sup>8</sup> All minor witnesses are referred to solely by their first name.

24 <sup>9</sup> This portion of Gabriella's trial testimony is inferred from the Proposed Decision's summary of  
25 Gabriella's deposition testimony. (PD (2/1/16) at p. 13.)

26 <sup>10</sup> The quoted phrase from Galicia's confession was omitted from the Proposed Decision but may be  
27 inferred from other descriptions. (CT 921; PD (2/1/16) at p. 7 ["he only put his penis on the outside  
28 of her vagina"].)

29 <sup>11</sup> The quoted phrase was also omitted from the Proposed Decision but may be inferred. (CT 924;  
PD (2/1/16) at p. 7 ["Claimant admitted to having intercourse with [A.G.] twice in the past two years],  
at p. 15 ["Claimant could not recall ... Whether he told detectives that the second time there was full  
penetration"].)

1       **C. Habeas Proceedings**

2           Galicia’s counsel later uncovered damaging impeachment information about Dr. Spencer.  
3 Specifically, Dr. Spencer provided false testimony during a trial proceeding in 1991 involving the  
4 alleged sexual abuse of two minors.<sup>12</sup> Following this discovery, A.G. was examined by three  
5 separate doctors.

6           The first examination was conducted by Dr. Neysa Whiteman on June 29, 2010. Dr.  
7 Whiteman described A.G.’s hymen as “healthy with no suggestion of recent trauma.” Dr. Whiteman  
8 opined that A.G.’s hymen “appears closed,” which was consistent with virginity. Dr. Whiteman  
9 acknowledged that her opinion was not conclusive.

10          The second examination was conducted by Dr. Carlos Oliva on July 5, 2010. Dr. Olivia found  
11 “remnants” of A.G.’s hymeneal tissue. Dr. Olivia nevertheless found no signs of “hymeneal tears or  
12 trauma.”

13          At the prosecution’s request, the third examination was conducted by Dr. Premi Suresh on  
14 September 2, 2011. Like Drs. Whiteman and Oliva, Dr. Suresh did not find any tears on A.G.’s  
15 hymen. Dr. Suresh also reviewed Dr. Spencer’s photographs but was unable to confirm Dr.  
16 Spencer’s findings of a full transection tear. In Dr. Suresh’s opinion, A.G.’s examination appeared  
17 normal. Dr. Suresh emphasized that the lack of medical findings did not necessarily negate A.G.’s  
18 claim of abuse, as the majority of children who have been sexually abused have a normal genital  
19 exam when seen non-acutely.

20          Based upon this newly discovered evidence, and without opposition from the District Attorney  
21 or Attorney General, the superior court granted Galicia’s petition for habeas relief on November 22,  
22 2011. The district attorney subsequently declined to retry Galicia on February 22, 2012, at which  
23 time Galicia was released. A video clip from an Univision news broadcast about Galicia’s release  
24 included comments by San Diego District Attorney Bonnie Dumanis, who praised Galicia’s release  
25 as “the right thing to do.”<sup>13</sup>

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28 <sup>12</sup> *Wallis ex rel Wallis v. Spencer* (1999) 202 F.3d 1126 (*Wallis*).

28 <sup>13</sup> This videotape was played for the Board. (CalVCB Board Meeting Transcript (2/18/16) at pp. 5-  
29 8.)

1           However, Galicia declined to seek a finding of factual innocence from the San Diego County  
2 Superior Court following his release. Instead, Galicia pursued a civil rights action, as well as the  
3 underlying application before CalVCB.<sup>14</sup>

4           **D. CalVCB Proceedings**

5           Galicia submitted his application for compensation to CalVCB on July 3, 2012. Both Galicia  
6 and the Attorney General presented evidence in support of, and in opposition to, the application.  
7 As summarized below, the evidence included transcripts from various civil proceedings, as well as  
8 live testimony from the CalVCB hearing.

9           **1. Transcript Evidence**

10           **a. A.G.**

11           In her deposition, A.G. continued to deny that Galicia had molested her and insisted she had  
12 falsely accused him. A.G. claimed that she simply made herself cry when initially disclosing the  
13 sexual abuse and that she had based the graphic details upon television shows and a sex education  
14 class. A.G. maintained that she only decided to run away because her family would not let her see  
15 her boyfriend, although she inconsistently identified his last name. A.G. denied telling anyone she  
16 had been abused before running away. A.G. also denied going to Mexico for a pregnancy test and  
17 insisted it was only a routine exam.

18           A.G. claimed that she first recanted the allegations to her foster parent Leduc in February  
19 2008, not June 2008. A.G. claimed that her social worker had not only encouraged her to lie about  
20 Galicia, but had also encouraged her to coerce I.G. into falsely accusing Galicia of molestation.  
21 When informed that Galicia confessed to police that A.G. had initiated sex with him, A.G. became  
22 upset.

23           **b. I.G.**

24           In her deposition, I.G. was unable to recall most of the facts related to the case, possibly due  
25 to her young age at the time of the criminal trial. She did not accuse Galicia of any lewd conduct.

26           **c. Social Worker Soto**

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<sup>14</sup> CalVCB Board Meeting Transcript (2/18/16) at p. pp. 21-22.

1 Soto was A.G.'s social worker between December 2007 and March 2008. In her deposition,  
2 Soto testified that A.G. never recanted the allegations of abuse to her during that three-month  
3 period of time. To the contrary, A.G. repeatedly affirmed to Soto that Galicia had sexually abused  
4 her. Soto feared that A.G. would recant if returned to her parents' custody.

5 **d. Social Worker Saavedra**

6 Saavedra was A.G.'s social worker after March 2008. Saavedra first learned that A.G.  
7 recanted on June 16, 2008.

8 **2. Hearing Evidence**

9 **a. Galicia**

10 Galicia testified at the CalVCB hearing on May 26, 2015. He denied lewdly touching A.G. or  
11 I.G. He admitted A.G. went to Mexico for a doctor appointment, but insisted it was not for a  
12 pregnancy test. Galicia claimed that he had falsely confessed to police about having sex twice with  
13 A.G. so that his siblings would be released from foster care and returned home. Galicia admitted  
14 telling police that sex with A.G. was consensual and that he had penetrated A.G. only a small  
15 amount the first time. Galicia maintained he was unable to recall many details of his confession,  
16 such as whether A.G. placed his hand on her genitals or whether he fully penetrated A.G.'s vagina  
17 during their second sexual encounter. Galicia also claimed he had lied to police about being  
18 molested when he was a boy, supposedly to gain credibility. Galicia's counsel reiterated that the  
19 confession was suppressed at trial because it had been unconstitutionally induced by promises of  
20 leniency.

21 **b. Nurse Boyle**

22 Cathy Boyle, a pediatric nurse practitioner who has conducted over 10,000 sexual assault  
23 examinations and appeared as an expert in approximately 460 cases, also testified at the CalVCB  
24 hearing. Nurse Boyle did not personally examine A.G. Instead, Nurse Boyle reviewed Dr. Spencer's  
25 photographs of A.G.'s hymen and detected a "deep cleft" in the five and eight o'clock positions.  
26 Nurse Boyle acknowledged that a deep cleft is a less severe injury than the full transection tear  
27 identified by Dr. Spencer. Nurse Boyle nevertheless opined that A.G.'s deep clefts were consistent  
28 with a penetrating trauma.

1 Nurse Boyle disagreed with the contrary conclusions reached by Drs. Whiteman, Oliva, and  
2 Suresh. Nurse Boyle noted that Dr. Whiteman seemingly failed to manipulate A.G.'s vagina in order  
3 to view the hymen from the same vantage point as Dr. Spencer's photographs. Nurse Boyle found  
4 Dr. Olivia's findings of "hymeneal remnants" without scars or marks to be inconsistent because the  
5 detection of "remnants of hymeneal tissue" necessarily signifies healed trauma to the hymen. As for  
6 Dr. Suresh's failure to detect the clefts in the photographs taken by Dr. Spencer, Nurse Boyle  
7 acknowledged that it may be difficult to determine the state of the hymen by solely looking at the  
8 photographs.

9  
10 **a. Psychologist Uriquiza**

11 Anthony Uriquiza, a clinical psychologist who specializes in child abuse, explained Child  
12 Sexual Abuse Accommodation Syndrome. This syndrome identifies five common characteristics  
13 among victims of child sexual abuse: (1) secrecy about the abuse; (2) feelings of helplessness to  
14 stop the abuse; (3) entrapment and accommodation, such as by disassociating during the abuse;  
15 (4) delayed and unconvincing disclosure, often after the victim enters adolescence; and (5)  
16 eventual recantation, especially in familial cases where the victim feels ostracized or blamed. Dr.  
17 Uriquiza acknowledged that false accusations of child sexual abuse do occur, though only in about  
18 four percent of cases.

19 **3. Post-Hearing Evidence**

20 Hearing Officer Turner-Bond considered all of the evidence and drafted an initial proposed  
21 decision, dated September 30, 2015, in favor of granting compensation. On October 28, 2015,  
22 the parties were notified of the decision, and the matter was calendared for the Board's  
23 consideration at the meeting on December 10, 2015.

24 In advance of the meeting, Galicia and the Attorney General submitted written arguments  
25 to the Board pursuant to California Code of Regulations, Title 2, section 619.4. Galicia's rebuttal  
26 letter, dated November 24, 2015, emphasized the absence of any medical findings of abuse and  
27 attached excerpts of recent deposition transcripts for Drs. Suresh and Whiteman. The Attorney  
28 General's rebuttal letter, dated November 30, 2015, detailed the incriminating evidence against  
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1 Galicia and urged the Board to reject the hearing officer's recommendation. On December 4,  
2 2015, the Attorney General supplemented its rebuttal with the complete deposition transcripts for  
3 Drs. Suresh and Whiteman, as well as a declaration by Dr. Suresh, and the deposition transcript  
4 for Nataly R. After receiving these materials, the Board referred the matter back to the hearing  
5 officer for reconsideration on December 7, 2015.

6 **a. Dr. Whiteman**

7 According to Dr. Whiteman's deposition, which was taken after the CalVCB hearing, Dr.  
8 Whiteman did not have any expertise in examining child victims of sexual assault. Nonetheless, in  
9 her opinion as a gynecologist, A.G.'s hymen appeared intact, which suggested A.G. had not yet  
10 had sexual intercourse. Dr. Whiteman concluded that A.G.'s examination was consistent with her  
11 recantation that she had not been molested.

12 **b. Dr. Suresh**

13 Dr. Suresh testified in a deposition that she had performed approximately one thousand  
14 sexual assault examinations. Dr. Suresh did not detect any transection tears of A.G.'s hymen as  
15 reported by Dr. Spencer, nor did she detect any deep clefts as reported by Nurse Boyle.  
16 Nonetheless, Dr. Suresh emphasized that A.G.'s seemingly normal hymen did not mean that she  
17 had not been sexually abused. Even a pregnant teenager may have a normal hymen. Dr. Suresh  
18 added that physical findings of sexual abuse are generally detected in only five to 10 percent of  
19 non-acute examinations.

20 **c. Nataly R.**

21 Nataly R. (Nataly) testified in a deposition that she was one of the foster children living with  
22 A.G. and I.G. before Galicia's trial. Nataly recalled that A.G. and I.G. both told her that their  
23 brother Galicia had lewdly touched them, although A.G. also denied any such touching occurred.  
24 A.G. also told Nataly that she loved Galicia, did not want to get him in trouble, and wanted to go  
25 home. Nataly noticed that A.G.'s mother behaved coldly towards A.G. and encouraged A.G. to  
26 drop the charges. A.G. additionally told Nataly that she had a boyfriend.

27 **4. CalVCB Proposed Decision**

1 In accordance with the Board's request, Hearing Officer Turner-Bond reconsidered all of  
2 the evidence and drafted a second Proposed Decision, dated February 1, 2016. Like the first, the  
3 second Proposed Decision also recommended granting compensation. The Proposed Decision  
4 found that the consistent expert opinions from Drs. Whiteman, Oliva, and Suresh outweighed the  
5 contrary expert opinion of Nurse Boyle. The Proposed Decision further found that Galicia's  
6 confession was not credible because it had been induced by promises of leniency. The Proposed  
7 Decision also found that A.G.'s initial claims of sexual abuse were not credible because of her  
8 numerous inconsistent statements. The Proposed Decision additionally found that the district  
9 attorney's non-opposition to Galicia's habeas petition and subsequent failure to retry Galicia  
10 pointed to his innocence. Based upon these findings, the Proposed Decision found that Galicia  
11 had proven, by a preponderance, that he was actually innocent of lewdly touching A.G. and I.G.

## 14 5. CalVCB Board Meeting

15 On February 18, 2016, the Board considered whether or not to adopt the Proposed  
16 Decision. Counsel for both parties appeared. In support of the Proposed Decision, Galicia's  
17 counsel presented the videotape of the Univision news story and emphasized the District  
18 Attorney's support for Galicia's release.<sup>15</sup> But when asked by the Board why Galicia declined to  
19 seek a finding of factual innocence from the superior court, counsel replied he had no  
20 explanation.<sup>16</sup> Galicia was present but did not address the Board.

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21 <sup>15</sup> CalVCB Board Meeting Transcript (2/18/16) at p. 13.

22 <sup>16</sup> CalVCB Board Meeting Transcript (2/18/16) at pp. 21-22. Incidentally, the superior court may well  
23 have declined to find Galicia factually innocent, given the judge's comments during the sentencing  
24 hearing to A.G. and her mother Federica. (8 RT 1460 [*"I am broken hearted at what has happened*  
25 *to you in the course of this case and what you have had to go through as a child of your age. I think*  
26 *it's very, very sad. You shouldn't blame yourself. It's not your fault. ...And I don't want you to feel*  
27 *bad for what has happened to your brother. That was not your fault. And I just hope through time*  
28 *that you and your mother will be able to realize that"*]; 8 RT 1468-1469 [*"I want you to understand*  
29 *that there were legal reasons why your son's confession to these molestations could not come in in*  
*trial. Your son did admit that he did these things to your daughter. ...And I've observed [A.G.] a lot*  
*during the course of this case. This young girl is a smart, articulate young woman that could do a*  
*lot of things with her life. And I don't think it's fair to her to make her feel that this is her fault... Your*  
*son molested your two daughters, and you need as the mom of this family to make it right with your*

1 In opposition to the Proposed Decision, the Attorney General presented a portion of the  
2 videotape of A.G.'s initial disclosure, wherein A.G. tearfully recalled the first time Galicia molested  
3 her when she was six years old.<sup>17</sup> The Attorney General argued that the "young girl breaking  
4 down in that video was not lying when she painfully and courageously admitted she was a victim of  
5 molestation for six years." The Attorney General reminded the Board that a "finding that claimant  
6 is innocent by extension finds that [A.G.] lied." A representative from Crime Victim Action Alliance  
7 also appeared in opposition to the Proposed Decision and advised the Board that Nurse Boyle is  
8 a highly respected expert in the field of child sexual assault.

9 The Board unanimously voted to reject the Proposed Decision and deny compensation.  
10 Board Member Michael Ramos, who also serves as the San Bernardino County District Attorney,  
11 noted the inherent complexities of child molest prosecutions involving family members, recognized  
12 the frequency with which recantation happens in familial settings, and confirmed Nurse Boyle was  
13 a well-known expert in the field of child sexual assault.<sup>18</sup> Chairwoman Marybel Batjer similarly  
14 recognized the "human complications" in this case and emphasized the vast differences among  
15 the medical opinions. The Board ultimately decided that Galicia had failed to satisfy his burden of  
16 proving actual innocence by a preponderance of the evidence. The Board's oral pronouncement  
17 was summarized in the three-page Board Decision.

18 The Board subsequently issued four factual findings in support of its decision. First, the  
19 Board found Nurse Boyle's expert opinion that the photographs taken of A.G.'s hymen in 2007  
20 showed evidence of hymeneal tears and/or scarring consistent with penetration was not  
21 outweighed by the contrary conclusions of Drs. Whiteman, Oliva, and Suresh. Second, the Board  
22 found A.G.'s initial disclosure of abuse was not rendered incredible by her subsequent recantation  
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25 *girls*"], emphasis added.) No adverse presumption was drawn by the Board as a result of Galicia's  
26 failure to seek or obtain a finding of factual innocence. (Pen. Code, § 1485.55, subd. (e).)

27 <sup>17</sup> CalVCB Board Meeting Transcript (2/18/16) at p. 13; see also DVD of Forensic Interview of A.G.  
28 (12/26/07) at 08:04-09:52.

29 <sup>18</sup> CalVCB Board Meeting Transcript (2/18/16) at pp. 22-23; see also Cal. Code Regs., tit. 2, §  
619.1, subd. (e) ("board members ... may use relevant experience, technical competence and  
specialized knowledge to evaluate the evidence").

1 or inconsistent statements, considering A.G.'s emotional demeanor depicted in the videotape, as  
2 well as the typical symptoms of Child Abuse Sexual Accommodation Syndrome. Third, the Board  
3 found Galicia's confession was not necessarily rendered unreliable by law enforcement's promises  
4 of leniency. Fourth and finally, the Board found the district attorney's stipulation to habeas relief  
5 and failure to retry Galicia did not reflect a determination of actual innocence. Based upon these  
6 four findings, the Board reiterated that the overall weight of the evidence failed to prove, by a  
7 preponderance, that Galicia did not lewdly touch A.G. or I.G.

#### 8 **IV. DETERMINATION OF ISSUES**

9 Penal Code section 4900 allows any person, who has been convicted and imprisoned for a  
10 felony offense, to apply for compensation from CalVCB. To prevail, the applicant bears the burden  
11 to prove, by a preponderance of the evidence, that:

- 12 (1) the crime with which he was charged was either not committed at all, or, if  
13 committed, was not committed by him, and  
14 (2) he sustained injury through his erroneous conviction and imprisonment.<sup>19</sup>

15 "Preponderance of the evidence" means evidence that has more convincing force than that  
16 opposed to it.<sup>20</sup>

17 When determining whether the applicant has satisfied his burden of proof, the Board may  
18 consider the "claimant's denial of the commission of the crime; reversal of the judgment of  
19 conviction; acquittal of claimant on retrial; or, the decision of the prosecuting authority not to retry  
20 claimant of the crime...." However, none of these circumstances may be deemed sufficient evidence  
21 to warrant a recommendation for compensation "in the absence of substantial independent  
22 corroborating evidence that claimant is innocent of the crime charged." The Board may also  
23 "consider as substantive evidence the prior testimony of witnesses [that] claimant had an  
24 opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant had an  
25 opportunity to object." Ultimately, the Board may consider "any other information that it deems  
26 relevant to the issue before it," even if inadmissible under the traditional rules of evidence, so long

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28 <sup>19</sup> Pen. Code, §§ 4903, subd. (a), 4904.

29 <sup>20</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

1 as “it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of  
2 serious affairs.”<sup>21</sup>

3 Typically, the Board’s decision whether or not to grant an application for compensation is  
4 based upon the hearing officer’s proposed decision, plus any written rebuttal argument from the  
5 parties, as well as any additional evidence and argument presented at the Board Meeting.<sup>22</sup> The  
6 Board is free to adopt or reject the proposed decision, in whole or in part.<sup>23</sup> If the Board does not  
7 adopt the proposed decision, then under subdivision (d) of section 619.2 of Title 2 of the California  
8 Code of Regulations,

- 9 (1) the Board shall make a statement of decision that includes: (A) the decision made  
10 about the application; and (B) the reasons for the decision; and
- 11 (2) board staff shall prepare a written decision consistent with the board’s statement  
12 of decision.<sup>24</sup>

13 The Board is also permitted, if it so chooses, to “decide the case itself after reviewing the record,  
14 including a transcript of the hearing.”<sup>25</sup> The Board may even “decide the case itself by conducting a  
15 hearing to take additional evidence or argument” or, alternatively, “order the hearing officer to take  
16 additional evidence or argument....”<sup>26</sup>

17 Here, the Board declined to adopt the Proposed Decision and determined, instead, that  
18 Galicia had failed to satisfy his burden of proving his innocence by a preponderance of the  
19 evidence. As required by subdivision (d)(1) of section 619.2,<sup>27</sup> the Board’s “statement of decision”  
20 consists of the Board Decision and Board Findings. Subdivision (d)(2)’s requirement of a “written  
21 decision” is satisfied by this writing, which was prepared by CalVCB staff in accordance with the  
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23 <sup>21</sup> Cal. Code Regs., tit. 2, § 641, subds. (a)-(c).

24 <sup>22</sup> Cal. Code Regs., tit. 2, §§ 619.1; 619.4.

25 <sup>23</sup> Cal. Code Regs., tit. 2, §§ 619.2, subd.(c), 619.5, subd. (b).

26 <sup>24</sup> Cal. Code Regs., tit. 2, §§ 619.2, subd. (d).

27 <sup>25</sup> Cal. Code Regs., tit. 2, §§ 619.5, subd. (c)(1).

28 <sup>26</sup> Cal. Code Regs., tit. 2, §§ 619.5, subd. (c)(3)-(4).

29 <sup>27</sup> Cal. Code Regs., tit. 2, §§ 619.2, subd. (d)(1)(A)-(B).

1 Board's determination.<sup>28</sup> The Board implicitly declined to exercise its right to review the  
2 administrative record in this matter or seek any additional evidence or argument.<sup>29</sup>

3 As determined by the Board, the evidence fails to prove that Galicia is more likely innocent  
4 than guilty of lewdly touching A.G. and I.G. Admittedly, A.G. and I.G. both testified under oath that  
5 they had falsely accused Galicia of molesting them. Nevertheless, during their videotaped  
6 interviews, A.G. and I.G. both provided a detailed account Galicia's sexual abuse. Significantly, A.G.  
7 broke down into tears as she recalled the first time Galicia "put his part inside of [her] part" when  
8 she was just six years old. A.G.'s emotional demeanor bolsters the veracity of her initial disclosure.  
9 The disclosure is further bolstered by A.G.'s classmate Gabriela, who testified that A.G. confided  
10 Galicia's abuse before attempting to run away, and by A.G.'s foster sister Nataly, who testified that  
11 A.G. admitted Galicia's abuse before later denying it at her mother's urging. A.G.'s foster parent  
12 Leduc and social workers Soto and Saavedra further corroborated A.G.'s initial disclosure of sexual  
13 abuse. As recognized by the Child Abuse Sexual Accommodation Syndrome, child victims often  
14 recant when their abuser is a close family member. On balance, A.G.'s initial disclosure of abuse is  
15 not rendered incredible by her subsequent denials or other inconsistent statements. Thus, the  
16 recantations by A.G. and I.G. are insufficient to demonstrate Galicia's innocence.

17 The varying medical expert opinions are likewise insufficient to exonerate Galicia. Nurse  
18 Boyle, who is a renowned expert in the field of child sexual assault examinations, identified two deep  
19 clefts in a photograph of A.G.'s hymen that were consistent with a penetrating trauma. By  
20 comparison, Drs. Whiteman, Oliva, and Suresh did not detect any such clefts, either when  
21 personally examining A.G. or reviewing the photograph. However, Drs. Whiteman and Oliva were  
22 inexperienced in detecting child sexual assault injuries. Dr. Suresh is an expert in this area, though  
23 with less experience than Nurse Boyle. Nonetheless, Dr. Suresh also recognized that sexual  
24 assaults often leave no physical injuries and, therefore, the absence of any medical findings did not  
25 necessarily negate A.G.'s claim of abuse. Overall, Nurse Boyle's expert opinion that A.G.'s hymen  
26 appeared to have sustained a penetrating trauma was not outweighed by the contrary opinions from

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28 <sup>28</sup> Cal. Code Regs., tit. 2, §§ 619.2, subd. (d)(2).

29 <sup>29</sup> Cal. Code Regs., tit. 2, §§ 619.5, subd. (c)(1).

1 Drs. Whiteman, Oliva, and Suresh. Furthermore, the opinions by Drs. Whiteman, Olivia, and Suresh  
2 are not necessarily exonerating because Galicia was convicted of only lewdly touching A.G., not  
3 raping her. Accordingly, the medical evidence as a whole is insufficient to demonstrate Galicia's  
4 innocence.

5 Galicia's own confession further undermines his claim of innocence. True, Galicia  
6 incriminated himself only after law enforcement promised to return his siblings to their mother and  
7 provide him with counseling. Nonetheless, the incriminating details in Galicia's confession went  
8 beyond merely parroting A.G.'s accusations. For instance, Galicia quibbled over the degree to  
9 which his penis had penetrated A.G.'s vagina during their first sexual encounter, while admitting full  
10 penetration during their second encounter. Galicia would not bother to dispute these aspects of  
11 A.G.'s accusations if he had only confessed because he would say anything to have his family  
12 reunited. Galicia also insisted that A.G. had initiated their sexual relationship by rubbing her  
13 genitals against him and placing his hand under her pants. Such conduct by A.G. is difficult to  
14 reconcile with her demeanor in the videotape. But if no sexual abuse ever happened, Galicia would  
15 not volunteer these disturbing details in an attempt to minimize his culpability. Under these  
16 circumstances, Galicia's confession is not entirely unreliable and appears to contain at least a grain  
17 of truth.<sup>30</sup> Consequently, Galicia's confession renders his contrary testimony at the CalVCB hearing  
18 unconvincing.

19 Moreover, the District Attorney's decision not to oppose Galicia's habeas petition or to retry  
20 him falls short of proving his innocence. The videotape of the Univision broadcast confirms the  
21 District Attorney's support for Galicia's release from custody after having been convicted based  
22 upon questionable expert medical testimony from Dr. Spencer and recanted victim testimony.  
23 Nevertheless, the District Attorney did not expressly declare any subjective belief in Galicia's  
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25 <sup>30</sup> The Board may consider Galicia's confession in this informal administrative proceeding. (See  
26 *Harris v. New York* (1971) 401 U.S. 222, 223-224 (allowing defendant's otherwise voluntary  
27 confession obtained in violation of *Miranda* to be admissible as impeachment evidence against the  
28 defendant); see also *Gikas v. Zolin* (1993) 6 Cal.4th 841, 859 ("It is settled that the exclusionary rule  
29 does not apply to all administrative hearings"); Cal. Code Reg., tit. 2, § 641, subd. (c) (permitting  
consideration of all "relevant evidence ... if it is the sort of evidence on which reasonable persons  
are accustomed to rely in the conduct of serious affairs").

1 innocence. In general, a prosecutor might decline to retry a defendant because of concerns that  
2 the evidence is insufficient to prove guilt beyond a reasonable doubt, even though the prosecutor  
3 subjectively believes the defendant is guilty. But even assuming the District Attorney believed  
4 Galicia was actually innocent, such a belief is insufficient to warrant compensation without additional,  
5 independent and corroborating evidence of innocence, which is absent here.<sup>31</sup>

6 After considering all of the incriminating and exculpatory evidence detailed above, the Board  
7 ultimately determined that Galicia failed to prove his innocence by a preponderance. The  
8 incriminating evidence included the compelling videotape of A.G.'s initial disclosure, in which she  
9 detailed Galicia's extensive sexual abuse between the ages of 6 and 13. It also included A.G.'s  
10 consistent disclosures to the school counselor, sheriff's deputy, classmate Gabriela, foster parent  
11 Leduc, social workers Soto and Saavedra, and foster sister Nataly. Additional incriminating  
12 evidence included I.G.'s initial disclosure of Galicia's lewd touchings on her breasts and vagina  
13 when she was six years old. Galicia's confession, as well as Nurse Boyle's expert opinion, are  
14 likewise incriminating. By comparison, the exculpatory evidence largely consisted of recantations  
15 from both A.G. and I.G., as well as Galicia's denials when testifying at the CalVCB hearing. The  
16 exculpatory evidence also included the expert opinions from Drs. Whiteman, Olivia, and Suresh, in  
17 addition to the District Attorney's support of Galicia's release from custody.

18 All in all, the Board determined that Galicia's exculpatory evidence did not outweigh the  
19 incriminating evidence. Insufficient evidence proved that Galicia was more likely innocent, than  
20 guilty, of lewdly touching A.G. and I.G. As a whole, the evidence failed to exonerate Galicia of his  
21 two convictions for lewdly touching A.G. and I.G., even though those convictions were no longer  
22 legally valid.

## 23 **V. CONCLUSION**

24 In sum, the Board denied Galicia's claim for compensation. He failed to demonstrate by a  
25 preponderance of evidence that he was actually innocent of the crimes with which he was charged  
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28 <sup>31</sup> Cal. Code Regs., tit. 2, § 641, subd. (a).  
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1 and convicted. The Board, therefore, determined that Galicia is not eligible for compensation  
2 under Penal Code section 4900.

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4 Date: February 8, 2018

5 \_\_\_\_\_  
6 Laura Simpton  
7 Senior Attorney  
8 California Victim Compensation Board  
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**BEFORE THE VICTIM COMPENSATION BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

**Luis Galicia**

**Board's Written Decision  
(Penal Code § 4900)**

On March 21, 2018, the California Victim Compensation Board adopted the attached Written Decision in the above-referenced matter.

Date: March 21, 2018

\_\_\_\_\_  
Michelle Greer  
Board Liaison  
California Victim Compensation Board