

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

In the Matter of the First Amended
Accusation Against:

Kathryn Malone, M.D.

Physician's & Surgeon's
Certificate No. A 53252

Respondent.

Case No. 800-2018-048090

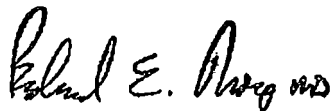
DECISION

The attached Stipulated Settlement and Disciplinary Order 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 December 20, 2023.

IT IS SO ORDERED: November 20, 2023.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
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9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the First Amended Accusation
Against:

Case No. 800-2018-048090

14 **KATHRYN MALONE, M.D.**
15 **John Muir Health**
16 **Berkeley Outpatient Center**
3100 San Pablo Avenue, Suite 310
Berkeley, California 94702

OAH No. 2023030691

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 **Physician's and Surgeon's Certificate**
18 **No. A 53252**

19 Respondent.

20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
25 California (Board). This action was brought by then Complainant William Prasifka,¹ solely in his
26 official capacity. Complainant is represented in this matter by Rob Bonta, Attorney General of the
27 State of California, and by Joseph F. McKenna III, Deputy Attorney General.

28 ¹ Mr. Prasifka retired on December 20, 2022.

1 decision; and all other rights accorded by the California Administrative Procedure Act and other
2 applicable laws, having been fully advised of same by her counsel.

3 9. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
4 waives and gives up each and every right set forth above.

5 **CULPABILITY**

6 10. Respondent understands and agrees that the charges and allegations contained in First
7 Amended Accusation No. 800-2018-048090, if proven at a hearing, constitute cause for imposing
8 discipline upon her Physician's and Surgeon's Certificate No. A 53252.

9 11. Respondent stipulates that, at a hearing, Complainant could establish a *prima facie*
10 case or factual basis for the charges and allegations contained in the First Amended Accusation;
11 that she gives up her right to contest those charges and allegations contained in the First Amended
12 Accusation; and that she has thereby subjected her Physician's and Surgeon's Certificate to
13 disciplinary action.

14 **CONTINGENCY**

15 12. This stipulation shall be subject to approval by the Medical Board of California.
16 Respondent understands and agrees that counsel for Complainant and the staff of the Board may
17 communicate directly with the Board regarding this stipulation and settlement, without notice to
18 or participation by Respondent or her counsel. By signing the stipulation, Respondent
19 understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation
20 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as
21 its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
22 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
23 and the Board shall not be disqualified from further action by having considered this matter.

24 13. Respondent agrees that if an accusation is ever filed against her before the Board, all
25 of the charges and allegations contained in First Amended Accusation No. 800-2018-048090 shall
26 be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
27 any other licensing proceeding involving Respondent in the State of California.

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1 **ADDITIONAL PROVISIONS**

2 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
3 to be an integrated writing representing the complete, final and exclusive embodiment of the
4 agreements of the parties in the above-entitled matter.

5 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
6 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
7 signatures thereto, shall have the same force and effect as the originals.

8 16. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
10 enter the following Disciplinary Order:

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Respondent Kathryn Malone, M.D.'s Physician's and
13 Surgeon's Certificate No. A 53252 shall be and is hereby Publicly Reprimanded pursuant to
14 California Business and Professions Code section 2227, subdivision (a), subsection (4). This
15 Public Reprimand, which is issued in connection with the charges and allegations contained in
16 First Amended Accusation No. 800-2018-048090, is as follows:

17 1. **PUBLIC REPRIMAND.**

18 Respondent failed to adequately document in the progress notes of Patient B the necessary
19 information for the prescribing of controlled substances to said patient; failed to conduct
20 clinically appropriate examinations of Patient B's knee and back; and failed to document a formal
21 anxiety assessment and/or review alternative treatments to Patient B, as more particularly alleged
22 in First Amended Accusation No. 800-2018-048090.

23 2. **PRESCRIBING PRACTICES COURSE.**

24 Within sixty (60) calendar days of the effective date of this Decision, Respondent shall
25 enroll in a course in prescribing practices approved in advance by the Board or its designee.
26 Respondent shall provide the approved course provider with any information and documents that
27 the approved course provider may deem pertinent. Respondent shall participate in and
28 successfully complete the classroom component of the course not later than six (6) months after

1 Respondent's initial enrollment. Respondent shall successfully complete any other component of
2 the course within nine (9) months of enrollment. The prescribing practices course shall be at
3 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
4 requirements for renewal of licensure.

5 A prescribing practices course taken after the acts that gave rise to the charges in the First
6 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
7 the Board or its designee, be accepted towards the fulfillment of this condition if the course would
8 have been approved by the Board or its designee had the course been taken after the effective date
9 of this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its
11 designee not later than fifteen (15) calendar days after successfully completing the prescribing
12 practices course, or not later than fifteen (15) calendar days after the effective date of the
13 Decision, whichever is later.

14 Failure to successfully complete the prescribing practices course and submit a certification
15 of successful completion to the Board or its designee, within one (1) year of the effective date of
16 the Decision, is a violation of this agreement and shall be deemed an act of unprofessional
17 conduct and a separate and distinct basis for discipline, in addition to any other action that may be
18 taken based on Respondent's failure to successfully complete the prescribing practices course and
19 submit a certification of successful completion to the Board or its designee.

20 3. MEDICAL RECORD KEEPING COURSE.

21 Within sixty (60) calendar days of the effective date of this Decision, Respondent shall
22 enroll in a course in medical record keeping approved in advance by the Board or its designee.
23 Respondent shall provide the approved course provider with any information and documents that
24 the approved course provider may deem pertinent. Respondent shall participate in and
25 successfully complete the classroom component of the course not later than six (6) months after
26 Respondent's initial enrollment. Respondent shall successfully complete any other component of
27 the course within nine (9) months of enrollment. The medical record keeping course shall be at
28 Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

1 Respondent shall submit a certification of successful completion to the Board or its
2 designee not later than fifteen (15) calendar days after successfully completing the medical record
3 keeping course, or not later than fifteen (15) calendar days after the effective date of the Decision,
4 whichever is later.

5 A medical record keeping course taken after the acts that gave rise to the charges contained
6 in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole
7 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
8 course would have been approved by the Board or its designee had the course been taken after the
9 effective date of this Decision.

10 Failure to successfully complete the medical record keeping course and submit a
11 certification of successful completion to the Board or its designee, within one (1) year of the
12 effective date of the Decision, is a violation of this agreement and shall be deemed an act of
13 unprofessional conduct and a separate and distinct basis for discipline, in addition to any other
14 action that may be taken based on Respondent's failure to successfully complete the medical
15 record keeping course and submit a certification of successful completion to the Board or its
16 designee.

17 4. INVESTIGATION/ENFORCEMENT COST RECOVERY.

18 Respondent is hereby ordered to reimburse the Board its costs of enforcement, including
19 legal review, as applicable, in the amount of fourteen thousand one hundred sixty-four dollars
20 (\$14,164.00). Costs shall be payable to the Medical Board of California. Failure to pay such costs
21 is a violation of this agreement and shall be deemed an act of unprofessional conduct and a
22 separate and distinct basis for discipline.

23 Any and all requests for a payment plan shall be submitted in writing by Respondent to the
24 Board.

25 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility
26 to repay investigation and enforcement costs, including expert review costs (if applicable).

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5. FAILURE TO COMPLY.

Any failure by Respondent to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Vanessa Efremsky, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 53252. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 10/2/2023


KATHRYN MALONE, M.D.
Respondent

I have read and fully discussed with Respondent Kathryn Malone, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: Oct. 2, 2023

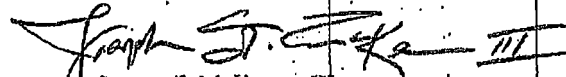
V.L. Efremsky
VANESSA EFREMSKY, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: October 2, 2023

Respectfully submitted,
ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General


JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 800-2018-048090

13 **KATHRYN MALONE, M.D.**

FIRST AMENDED ACCUSATION

14 John Muir Health
15 Berkeley Outpatient Center
3100 San Pablo Avenue, Suite 310
16 Berkeley, CA 94702

17 Physician's and Surgeon's Certificate No.
A 53252,

18 Respondent.
19

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21 **PARTIES**

22 1. Reji Varghese, (Complainant) brings this Accusation solely in his official capacity as
23 the Executive Director of the Medical Board of California, Department of Consumer Affairs
24 (Board).

25 2. On July 1, 1994, the Board issued Physician's and Surgeon's Certificate No. A 53252
26 to Kathryn Malone, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full
27 force and effect at all times relevant to the charges brought herein and will expire on June 30,
28 2024, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

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

9 5. Section 2234 of the Code states:

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

12 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
abetting the violation of, or conspiring to violate any provision of this chapter.

13 “(b) Gross negligence.

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

16 “ . . . ”

17 6. Section 2228.1 of the Code states:

18 “(a) On and after July 1, 2019, except as otherwise provided in subdivision
19 (c), the board shall require a licensee to provide a separate disclosure that includes
20 the licensee’s probation status, the length of the probation, the probation end date,
all practice restrictions placed on the licensee by the board, the board’s telephone
21 number, and an explanation of how the patient can find further information on the
licensee’s probation on the licensee’s profile page on the board’s online license
22 information Internet Web site, to a patient or the patient’s guardian or health care
surrogate before the patient’s first visit following the probationary order while the
23 licensee is on probation pursuant to a probationary order made on and after July 1,
2019, in any of the following circumstances:

24 “(1) A final adjudication by the board following an administrative hearing or
admitted findings or prima facie showing in a stipulated settlement establishing
25 any of the following:

26 “ . . . ”

27 “(D) Inappropriate prescribing resulting in harm to patients and a probationary
period of five years or more.

28 “ . . . ”

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7. Section 2241 of the Code states:

“(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

“(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

“...”

8. Section 2242 of the Code states:

“(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022¹ without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

“...”

9. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

10. The incidents alleged herein occurred in Alameda County, California.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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¹ Dangerous drug means any drug unsafe for self-use in humans or animals, including drugs that require a prescription to be lawfully dispensed.

1 **FACTUAL ALLEGATIONS**

2 **PATIENT A²**

3 12. Beginning in November, 2012, Respondent treated Patient A for a variety of medical
4 conditions, including chronic back pain.³ Patient A was on long-term opioid therapy for his
5 chronic pain and, as of December 17, 2020, Respondent prescribed morphine⁴ (45 milligrams two
6 times a day) to Patient A.

7 13. Despite prescribing long-term opioids for pain, Respondent often documented
8 minimal physical examinations. For example, on September 17, 2019, Respondent documented
9 "tenderness and deformity" in the musculoskeletal physical exam for Patient A. On June 19,
10 2020, despite the primary visit description of the patient's abnormal gait, Respondent documented
11 that Patient A had a "normal gait" in the physical examination. Respondent prescribed pain
12 medications to Patient A for chronic back pain for years, but failed to document a thorough back
13 examination including a clinically adequate assessment of Patient A's degree of disability and
14 level of functioning.

15 **PATIENT B**

16 14. Respondent first began treating Patient B in September, 2009, after the patient's knee
17 replacement surgery. Patient B was on methadone⁵ maintenance therapy at the time, managed by

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19 _____
20 ² The subject patients are designated as Patient A and Patient B to protect their privacy.
Respondent can confirm the patients' identities through discovery.

21 ³ Patient A was diagnosed with lumbar spine stenosis (narrowing of the spaces in the
22 spine) and spondylosis (wear and tear on spinal discs) which can put painful pressure on the
nerves that travel through the spine.

23 ⁴ Morphine sulfate is a potent opioid analgesic given for relief of moderate to severe pain.
24 It is both a dangerous drug as defined in 4022 of the Code, and a Schedule II controlled substance
and narcotic. Morphine can produce drug dependence and has high potential for abuse.

25 ⁵ Methadone is a synthetic narcotic analgesic with similar results as with morphine. It is a
26 dangerous drug as defined in section 4022 of the Code, and a Schedule II controlled substance
and narcotic. Methadone should be used with caution with patients also receiving other narcotic
27 analgesics. Patient B was receiving a daily dose of 60 milligrams of methadone from an outside
clinic when she first presented to Respondent for care.

1 another facility. Respondent initially managed Patient B's arthritic knee pain with opioids⁶, joint
2 injections, and physical therapy.

3 15. Respondent's medical records related to Patient B's level of functioning and knee
4 pain were limited. Physician notes reflecting physical examination of the knee were often absent,
5 or overly brief.⁷ Over the ten years of treatment by Respondent there was not one detailed knee
6 examination documented in Patient B's medical record.

7 16. In 2012, Patient B suffered several family tragedies and Respondent prescribed
8 alprazolam⁸ for anxiety. Although Patient B was treated for anxiety, little documentation exists
9 in the records: there was no documentation of assessment for anxiety or psychiatric evaluation.
10 For example, by October 1, 2019, Respondent was prescribing diazepam⁹ (5 milligrams up to two
11 times a day) for anxiety with no documentation related to Patient B's anxiety.

12 17. Respondent also prescribed Soma¹⁰ to Patient B for chronic back pain for several
13 years, though proper indication would be for short-term use because of the possibility of adverse
14 interaction. Respondent was concurrently prescribing benzodiazepines and high dosages of
15 opioids to Patient B; the risk of continued use of Soma was significant. Respondent failed to
16 document information related to Patient B's back pain: the medical records lacked medical
17 history and physical examinations. Records of the September 9, 2019, visit describe unspecified
18 back pain without further examination, and a note dated June 28, 2018 simply states "chronic
19

20 ⁶ For example, on October 18, 2019, Respondent was prescribing hydrocodone-
21 acetaminophen 10-325 milligrams 1 tablet every 8 hours. It is a dangerous drug as defined in
22 section 4022, and a Schedule II controlled substance and narcotics, and is used to treat pain.

23 ⁷ On June 24, 2019, musculoskeletal exam states only "exhibits tenderness."

24 ⁸ Also known as Xanax, alprazolam is a psychotropic from the benzodiazepine class which
25 is used for the management of anxiety disorder or the short-term relief of the symptoms of
26 anxiety. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled
27 substance and a narcotic.

28 ⁹ Diazepam (Valium) is a psychotropic drug used for the management of anxiety disorders
or the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section
4022 and a Schedule IV controlled substance. Diazepam can produce psychological and physical
dependence and should be prescribed with caution, especially to addiction-prone patients.

¹⁰ Soma is a trade name for carisoprodol a muscle relaxant and sedative. It is a dangerous
drug as defined in section 4022 of the Code, and a Schedule IV controlled substance.

1 back pain – we will continue her current treatment.” Patient B’s back pain was never documented
2 appropriately to justify the ongoing use of Soma.

3 18. Respondent’s treatment plans and objectives for Patient B were also inadequate.
4 Although there was a pain contract for the opioid therapy dated November 8, 2018, the doses in
5 the contract do not align with the doses prescribed, nor is there mention of the methadone being
6 concomitantly prescribed from an outside clinic. There is a similar lack of a plan to treat Patient
7 B’s anxiety or her back pain. In fact, Patient B’s back pain is mentioned only once at the visit on
8 June 26, 2018 that “we will continue her current treatment,” and no treatment plan or objective
9 was documented.

10 19. Respondent was prescribing high dosage opioids, Soma, and benzodiazepines, which
11 are a dangerous combination requiring frequent and thorough discussions of risks and benefits.
12 Respondent failed to document discussions regarding risks and benefits at the beginning of
13 treatment; Respondent thereafter used an inadequate, generic pain contract which did not
14 sufficiently outline the risks and benefits of the dangerous combination of benzodiazepines and
15 high dosage opioids.

16 20. Respondent failed to periodically review and document Patient B’s treatment and
17 progress in regards to her anxiety management. Respondent prescribed benzodiazepines for
18 anxiety which are appropriate in the short term, but Respondent prescribed them for years,
19 without trying other drug classes or therapy. No indication exists in the medical record that
20 Respondent considered alternative treatments or that such alternatives were discussed with
21 Patient B.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Repeated Negligent Acts and/or Prescribing Without Adequate Examination and**
24 **Inadequate Medical Documentation Regarding Patient A)**

25 21. Respondent Kathryn Malone, M.D. is subject to disciplinary action under sections
26 2234, subdivision (c), and/or 2242, and 2266 of the Code, as further described above in
27 Paragraphs 12 and 13, in that Respondent failed to perform and/or document adequate physical
28 examinations of Patient A while prescribing opioids for Patient A’s chronic back pain.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts and/or Failure to Conduct Physical Examination and Failure to Maintain Adequate and Accurate Record Regarding Patient B)

22. Respondent Kathryn Malone, M.D. is subject to disciplinary action under sections 2234, subdivisions (b) and/or (c), and/or 2242, and 2266 of the Code, as further described in Paragraphs 14 through 20, in that Respondent failed to:

A. Document and/or discuss medication efficacy or progress toward treatment goals related to Patient B's knee and back pain;

B. Document and/or conduct clinically appropriate examinations of Patient B's knee and back, including periodic assessment of Patient B's level of physical functioning;

C. Document and/or conduct a formal anxiety assessment and/or psychiatric assessment despite long-term prescribing of benzodiazepines.

D. Document and/or discuss adequately the risks and benefits of prescribing the potentially dangerous combination of opioids, benzodiazepines, and narcotics for chronic pain.

E. Document and/or review alternative treatments for anxiety besides long-term use of benzodiazepines.

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PRAYER

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

- 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 53252, issued to Respondent Kathryn Malone, M.D.;
- 2. Revoking, suspending, or denying approval of Respondent Kathryn Malone, M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 3. Ordering Respondent Kathryn Malone, M.D., to pay the reasonable and necessary costs incurred by the Board in the investigation and prosecution of this case pursuant to section 125.3 of the Code, and if placed on probation, to pay the Board the costs of probation monitoring;
- 4. Ordering Respondent Kathryn Malone, M.D. if placed on probation for five years or more for overprescribing, with a finding of patient harm caused thereby, to notify her patients pursuant to 2228.1 of the Code; and
- 5. Taking such other and further action as deemed necessary and proper.

DATED: JUL 28 2023

JENNA JONES FOR
 REJI VARGHESE
 Executive Director
 Medical Board of California
 Department of Consumer Affairs
 State of California
 Complainant

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