ROB BONTA
Attorney General of California
GREG W. CHAMBERS
Supervising Deputy Attorney General
State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3382
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **DOUGLAS JOEL ABELES, M.D.** **21030 Redwood Road** **Castro Valley, CA 94546** **Physician's and Surgeon's Certificate No. G 79953,** Respondent.	Case No. 800-2021-078983 **ACCUSATION**

PARTIES

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

2. On or about October 5, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number G 79953 to Douglas Joel Abeles, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2024, unless renewed.

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JURISDICTION

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

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

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
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> (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.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more 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.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.

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

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board no later than 30 calendar days after being notified by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

(h) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the board or the Department of Consumer Affairs, Health Quality Investigation Unit.

(i) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

COST RECOVERY

6. 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.

DEFINITIONS

7. Naprosyn, a trade name for naproxen, is a nonsteroidal anti-inflammatory drug (NSAID) with analgesic and antipyretic properties. It is a dangerous drug within the meaning of Code section 4022. Naprosyn is indicated for the treatment of rheumatoid arthritis, osteoarthritis, ankylosing spondylitis, juvenile arthritis, tendonitis, bursitis, acute gout, and for the management of pain and primary dysmenorrhea.

8. Norco, the trade name for hydrocodone w/APAP (hydrocodone with acetaminophen), is a semisynthetic narcotic analgesic, a dangerous drug as defined in Code section 4022, and a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code.

9. Oxycodone, a white odorless crystalline powder derived from the opium alkaloid, thebaine. Oxycodone is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a dangerous drug as defined in Code section 4022 and a Schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code. Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused.

10. Percocet, a trade name for a combination of oxycodone hydrochloride and acetaminophen, is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine, a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1)(N) of the Health and Safety Code.

FACTUAL ALLEGATIONS

PATIENT 1[1]

11. According to Respondent, Patient 1, a then 65-year-old male truck driver referred by Workers' Compensation, may have commenced treatment with Respondent in 2014 for pain to the left and right shoulders. Records were not available due to a change in record keeping programs. Additionally, Respondent believes he may have operated on Patient 1's right shoulder prior to January 14, 2016, when records first document Respondent prescribing Patient 1 Norco 10/325 mg #120 on a near monthly basis.

12. A subsequent MRI of the left shoulder revealed mild distal supraspinatus tendinopathy with small intrasubstance delamination but no full-thickness tear; moderate glenohumeral osteoarthritis, unchanged; degeneration of the anterior labrum. A MRI of the right

[1] Patients are identified by number to protect their privacy. Patient names will be provided in discovery.

shoulder revealed partial thickness interstitial chronic tearing of the superior portion of rotator cuff with thinning, degenerated appearance; suprasinatus muscle atrophy; AC joint arthropathy with mass effect on the cuff, risk factor for impingement.

13. On or about November 13, 2018, Respondent commenced prescribing Patient 1 Norco 10/325 mg #90 near monthly until March 12, 2019, when for five months the near monthly dosage decreased to Norco 10/325 mg #60, along with Naprosyn 500 mg #60.

14. On or about August 6, 2019, Respondent commenced prescribing Patient 1 Norco 10/325 mg #90 on a near monthly basis. On June 22, 2020 and July 13, 2020, Respondent increased the dosage prescribed to Patient 1 to Norco 10/325 mg #120.

15. During the course of treatment by Respondent, Patient 1 was never referred to a pain management specialist or other therapeutic modalities, even after an attempted opioid taper appears to have failed.

PATIENT 2

16. On or about August 29, 2017, Respondent commenced treating Patient 2, a then 66-year-old male, for bilateral knee problems, but specifically for right knee swelling and pain. Patient 2 had a significant medical history.

17. An August 31, 2017, MRI of the right knee revealed a complex degenerative tear involving the posterior horn of the medial meniscus, among other issues.

18. On or about October 18, 2017, Respondent performed arthroscopy on Patient 2. Respondent subsequently prescribed Percocet 10/325 mg #60 to Patient 2 for postoperative pain with refills continuing monthly through January 15, 2018.

19. On or about February 5, 2018, Respondent prescribed Patient 2 oxycodone HCL 15 mg #90 monthly, for the next nine months, through November 1, 2018.

20. There are no records recommending taper of medications, referral of other multimodal pain relief modalities, or referral to a pain management specialist.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence - Patient 1)

21. Paragraphs 11 through 15 are incorporated by reference as if fully set forth.

22. Respondent Douglas Joel Abeles, M.D., is subject to disciplinary action under sections 2234 and 2234(b) of the Code, in that Respondent engaged in unprofessional conduct in the care and treatment of Patient 1 by failing to refer Patient 1 to a pain management specialist or other therapeutic modalities, even after an attempted opioid taper appears to have failed.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence - Patient 2)

23. Paragraphs 16 through 20 are incorporated by reference as if fully set forth.

24. Respondent Douglas Joel Abeles, M.D., is subject to disciplinary action under sections 2234 and 2234(b) of the Code, in that Respondent engaged in unprofessional conduct in the care and treatment of Patient 2 by failing to recommend taper of medications for Patient 2, refer other multimodal pain relief modalities, or refer Patient 2 to a pain management specialist.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent Douglas Joel Abeles, M.D., Complainant alleges that on or about on November 18, 2021, in a prior disciplinary action titled *In the Matter of the Accusation Against Douglas Joel Abeles, M.D.* before the Medical Board of California, in Case Number 800-2018-042374, Respondent's license was placed on probation for three years for a criminal conviction, based on Respondent's unity of interest, ownership, and control of a corporate entity that pleaded "No Contest" to one count of insurance fraud. That decision is now final and is incorporated by reference as if fully set forth herein.

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 G 79953, issued to Respondent Douglas Joel Abeles, M.D.;

2. Revoking, suspending or denying approval of Respondent Douglas Joel Abeles, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Douglas Joel Abeles, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: APR 30 2024

Jenna Jones for
REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant