

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

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

Zelalem Tesfay, M.D.

**Physician's and Surgeon's
Certificate No. G 76854**

Case No.: 800-2020-071554

Respondent.

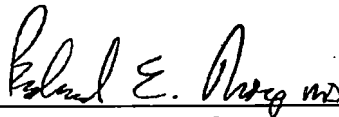
DECISION

The attached Stipulated Settlement and Disciplinary 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 October 30, 2024.

IT IS SO ORDERED: September 30, 2024.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, Chair
Panel B**

1 ROB BONTA
Attorney General of California
2 EDWARD KIM
Supervising Deputy Attorney General
3 CHRISTINA SEIN GOOT
Deputy Attorney General
4 State Bar No. 229094
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 800-2020-071554

12 **ZELALEM TESFAY, M.D.**
13 **3620 Parkview Drive**
Lakewood, CA 90712

OAH No. 2024020082

14 **Physician's and Surgeon's Certificate**
15 **No. G 76854,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

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

19 **PARTIES**

20 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
21 California (Board). He brought this action solely in his official capacity and is represented in this
22 matter by Rob Bonta, Attorney General of the State of California, by Christina Sein Goot, Deputy
23 Attorney General.

24 2. Respondent Zelalem Tesfay, M.D. (Respondent) is represented in this proceeding by
25 attorney Derek F. O'Reilly-Jones, whose address is: 355 South Grand Ave., Ste. 1750, Los
26 Angeles, CA 90071-5162.

27 3. On or about June 14, 1993, the Board issued Physician's and Surgeon's Certificate
28 No. G 76854 to Zelalem Tesfay, M.D. (Respondent). The Physician's and Surgeon's Certificate

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-
2 2020-071554, and will expire on January 31, 2025, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 800-2020-071554 was filed before the Board, and is currently
5 pending against Respondent. The Accusation and all other statutorily required documents were
6 properly served on Respondent on August 2, 2024. Respondent timely filed his Notice of
7 Defense contesting the Accusation.

8 5. A copy of Accusation No. 800-2020-071554 is attached as **Exhibit A** and
9 incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2020-071554. Respondent has also carefully read,
13 fully discussed with his counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 9. Respondent understands and agrees that the charges and allegations in Accusation
25 No. 800-2020-071554, if proven at a hearing, constitute cause for imposing discipline upon his
26 Physician's and Surgeon's Certificate.

27 10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case
28 for the charges in the Accusation, and that Respondent hereby gives up his right to contest those

1 charges.

2 11. Respondent does not contest that, at an administrative hearing, complainant could
3 establish a prima facie case with respect to the charges and allegations in Accusation No. 800-
4 2020-071554, a true and correct copy of which is attached hereto as Exhibit A, and that he has
5 thereby subjected his Physician's and Surgeon's Certificate, No. G 76854 to disciplinary action.

6 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
7 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
8 Disciplinary Order below.

9 **CONTINGENCY**

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

20 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
21 be an integrated writing representing the complete, final and exclusive embodiment of the
22 agreement of the parties in this above entitled matter.

23 15. Respondent agrees that if he ever petitions for early termination or modification of
24 probation, or if an accusation and/or petition to revoke probation is filed against him before the
25 Board, all of the charges and allegations contained in Accusation No. 800-2020-071554 shall be
26 deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any
27 other licensing proceeding involving Respondent in the State of California.

28 16. The parties understand and agree that Portable Document Format (PDF) and facsimile

1 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
2 signatures thereto, shall have the same force and effect as the originals.

3 17. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
5 enter the following Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 76854 issued
8 to Respondent ZELALEM TESFAY, M.D. is revoked. However, the revocation is stayed and
9 Respondent is placed on probation for thirty-five (35) months on the following terms and
10 conditions:

11 1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
12 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
13 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
14 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
15 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
16 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
17 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
18 completion of each course, the Board or its designee may administer an examination to test
19 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
20 hours of CME of which 40 hours were in satisfaction of this condition.

21 2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective
22 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
23 advance by the Board or its designee. Respondent shall provide the approved course provider
24 with any information and documents that the approved course provider may deem pertinent.
25 Respondent shall participate in and successfully complete the classroom component of the course
26 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
27 complete any other component of the course within one (1) year of enrollment. The medical
28 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing

1 Medical Education (CME) requirements for renewal of licensure.

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

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than 15 calendar days after successfully completing the course, or not later than
9 15 calendar days after the effective date of the Decision, whichever is later.

10 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
11 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
12 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
13 Respondent shall participate in and successfully complete that program. Respondent shall
14 provide any information and documents that the program may deem pertinent. Respondent shall
15 successfully complete the classroom component of the program not later than six (6) months after
16 Respondent's initial enrollment, and the longitudinal component of the program not later than the
17 time specified by the program, but no later than one (1) year after attending the classroom
18 component. The professionalism program shall be at Respondent's expense and shall be in
19 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

20 A professionalism program taken after the acts that gave rise to the charges in the
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
22 or its designee, be accepted towards the fulfillment of this condition if the program would have
23 been approved by the Board or its designee had the program been taken after the effective date of
24 this Decision.

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the program or not later
27 than 15 calendar days after the effective date of the Decision, whichever is later.

28 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this

1 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
2 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
3 licenses are valid and in good standing, and who are preferably American Board of Medical
4 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
5 relationship with Respondent, or other relationship that could reasonably be expected to
6 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
7 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
8 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

9 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
10 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
11 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
12 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
13 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
14 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
15 signed statement for approval by the Board or its designee.

16 Within 60 calendar days of the effective date of this Decision, and continuing throughout
17 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
18 make all records available for immediate inspection and copying on the premises by the monitor
19 at all times during business hours and shall retain the records for the entire term of probation.

20 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
21 date of this Decision, Respondent shall receive a notification from the Board or its designee to
22 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
23 shall cease the practice of medicine until a monitor is approved to provide monitoring
24 responsibility.

25 The monitor(s) shall submit a quarterly written report to the Board or its designee which
26 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
27 are within the standards of practice of medicine, and whether Respondent is practicing medicine
28 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure

1 that the monitor submits the quarterly written reports to the Board or its designee within 10
2 calendar days after the end of the preceding quarter.

3 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
4 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
5 name and qualifications of a replacement monitor who will be assuming that responsibility within
6 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
7 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
8 notification from the Board or its designee to cease the practice of medicine within three (3)
9 calendar days after being so notified. Respondent shall cease the practice of medicine until a
10 replacement monitor is approved and assumes monitoring responsibility.

11 In lieu of a monitor, Respondent may participate in a professional enhancement program
12 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
13 review, semi-annual practice assessment, and semi-annual review of professional growth and
14 education. Respondent shall participate in the professional enhancement program at Respondent's
15 expense during the term of probation.

16 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
17 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
18 Chief Executive Officer at every hospital where privileges or membership are extended to
19 Respondent, at any other facility where Respondent engages in the practice of medicine,
20 including all physician and locum tenens registries or other similar agencies, and to the Chief
21 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
22 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
23 calendar days.

24 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

25 6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
26 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
27 advanced practice nurses.

28 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules

governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena enforcement, as applicable, in the amount of \$27,939.00 (twenty-seven thousand nine hundred thirty-nine dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

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

9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine as defined in Business and
22 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
23 patient care, clinical activity or teaching, or other activity as approved by the Board. If
24 Respondent resides in California and is considered to be in non-practice, Respondent shall
25 comply with all terms and conditions of probation. All time spent in an intensive training
26 program which has been approved by the Board or its designee shall not be considered non-
27 practice and does not relieve Respondent from complying with all the terms and conditions of
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while

1 on probation with the medical licensing authority of that state or jurisdiction shall not be
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
6 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
7 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
8 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.

10 Periods of non-practice will not apply to the reduction of the probationary term.

11 Periods of non-practice for a Respondent residing outside of California will relieve
12 Respondent of the responsibility to comply with the probationary terms and conditions with the
13 exception of this condition and the following terms and conditions of probation: Obey All Laws;
14 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
15 Controlled Substances; and Biological Fluid Testing.

16 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
17 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
18 completion of probation. This term does not include cost recovery, which is due within 30
19 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
20 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate
21 shall be fully restored.

22 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
23 of probation is a violation of probation. If Respondent violates probation in any respect, the
24 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
25 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
26 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
27 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
28 be extended until the matter is final.

15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2020-071554 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Derek F. O'Reilly-Jones, Esq.. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be

1 bound by the Decision and Order of the Medical Board of California.

2
3 DATED: 8/6/24

Zelalem Tesfay
4 ZELALEM TESFAY, M.D.
5 Respondent

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

9
10 DATED: 08/06/2024

Derek O'Reilly-Jones
11 DEREK F. O'REILLY-JONES
12 Attorney for Respondent

13 **ENDORSEMENT**

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

16 DATED: _____

Respectfully submitted,

17 ROB BONTA
18 Attorney General of California
19 EDWARD KIM
20 Supervising Deputy Attorney General

21 CHRISTINA SEIN GOOT
22 Deputy Attorney General
23 Attorneys for Complainant

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27
28

bound by the Decision and Order of the Medical Board of California.

DATED: _____

ZELALEM TESFAY, M.D.
Respondent

I have read and fully discussed with Respondent Zelalem Tesfay, 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: _____

DEREK F. O'REILLY-JONES
Attorney for Respondent

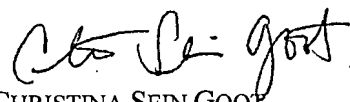
ENDORSEMENT

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

DATED: 8/7/2024

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General


CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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1 ROB BONTA
Attorney General of California
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Supervising Deputy Attorney General
3 CHRISTINA SEIN GOOT
Deputy Attorney General
4 State Bar No. 229094
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6481
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
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11 In the Matter of the Accusation Against:

Case No. 800-2020-071554

12 **ZELALEM TESFAY, M.D.**
13 **3620 Parkview Drive**
Lakewood, CA 90712

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G 76854,**

16 Respondent.

17 **PARTIES**

18
19 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
20 the Executive Director of the Medical Board of California, Department of Consumer Affairs
21 (Board).

22 2. On or about June 14, 1993, the Board issued Physician's and Surgeon's Certificate
23 Number G 76854 to Zelalem Tesfay, M.D. (Respondent). The Physician's and Surgeon's
24 Certificate was in full force and effect at all times relevant to the charges brought herein and will
25 expire on January 31, 2025, unless renewed.

26 **JURISDICTION**

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

1 indicated.

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

6 **STATUTORY PROVISIONS**

7 5. Section 125 of the Code states:

8 Any person, licensed under Division 1 (commencing with Section 100),
9 Division 2 (commencing with Section 500), or Division 3 (commencing with Section
10 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this
11 code applicable to them, who conspires with a person not so licensed to violate any
12 provision of this code, or who, with intent to aid or assist that person in violating
13 those provisions does either of the following:

12 (a) Allows their license to be used by that person.

13 (b) Acts as their agent or partner.

14 6. Section 2052 of the Code states:

15 (a) Notwithstanding Section 146, any person who practices or attempts to
16 practice, or who advertises or holds himself or herself out as practicing, any system or
17 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates
18 for, or prescribes for any ailment, blemish, deformity, disease, disfigurement,
19 disorder, injury, or other physical or mental condition of any person, without having
20 at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in
21 this chapter [Chapter 5, the Medical Practice Act], or without being authorized to
22 perform the act pursuant to a certificate obtained in accordance with some other
23 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten
24 thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section
25 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or
26 by both the fine and either imprisonment.

21 (b) Any person who conspires with or aids or abets another to commit any act
22 described in subdivision (a) is guilty of a public offense, subject to the punishment
23 described in that subdivision.

23 (c) The remedy provided in this section shall not preclude any other remedy
24 provided by law.

25 7. Section 2234 of the Code states:

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

(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. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

8. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

9. Section 2264 of the Code states:

The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

10. 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.

11. Section 2069 of the Code states:

(a) (1) Notwithstanding any other law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed

1 podiatrist. A medical assistant may also perform all these tasks and services upon the
2 specific authorization of a physician assistant, a nurse practitioner, or a certified
3 nurse-midwife.

4 (2) The supervising physician and surgeon may, at his or her discretion, in
5 consultation with the nurse practitioner, certified nurse-midwife, or physician
6 assistant, provide written instructions to be followed by a medical assistant in the
7 performance of tasks or supportive services. These written instructions may provide
8 that the supervisory function for the medical assistant for these tasks or supportive
9 services may be delegated to the nurse practitioner, certified nurse-midwife, or
10 physician assistant within the standardized procedures or protocol, and that tasks may
11 be performed when the supervising physician and surgeon is not onsite, if either of
12 the following apply:

13 (A) The nurse practitioner or certified nurse-midwife is functioning pursuant to
14 standardized procedures, as defined by Section 2725, or protocol. The standardized
15 procedures or protocol, including instructions for specific authorizations, shall be
16 developed and approved by the supervising physician and surgeon and the nurse
17 practitioner or certified nurse-midwife.

18 (B) The physician assistant is functioning pursuant to regulated services defined
19 in Section 3502, including instructions for specific authorizations, and is approved to
20 do so by the supervising physician and surgeon.

21 (b) As used in this section and Sections 2070 and 2071, the following
22 definitions apply:

23 (1) "Medical assistant" means a person who may be unlicensed, who performs
24 basic administrative, clerical, and technical supportive services in compliance with
25 this section and Section 2070 for a licensed physician and surgeon or a licensed
26 podiatrist, or group thereof, for a medical or podiatry corporation, for a physician
27 assistant, a nurse practitioner, or a certified nurse-midwife as provided in subdivision
28 (a), or for a health care service plan, who is at least 18 years of age, and who has had
at least the minimum amount of hours of appropriate training pursuant to standards
established by the board. The medical assistant shall be issued a certificate by the
training institution or instructor indicating satisfactory completion of the required
training. A copy of the certificate shall be retained as a record by each employer of
the medical assistant.

(2) "Specific authorization" means a specific written order prepared by the
supervising physician and surgeon or the supervising podiatrist, or the physician
assistant, the nurse practitioner, or the certified nurse-midwife as provided in
subdivision (a), authorizing the procedures to be performed on a patient, which shall
be placed in the patient's medical record, or a standing order prepared by the
supervising physician and surgeon or the supervising podiatrist, or the physician
assistant, the nurse practitioner, or the certified nurse-midwife as provided in
subdivision (a), authorizing the procedures to be performed, the duration of which
shall be consistent with accepted medical practice. A notation of the standing order
shall be placed on the patient's medical record.

(3) "Supervision" means the supervision of procedures authorized by this
section by the following practitioners, within the scope of their respective practices,
who shall be physically present in the treatment facility during the performance of
those procedures:

(A) A licensed physician and surgeon.

1 (B) A licensed podiatrist.

2 (C) A physician assistant, nurse practitioner, or certified nurse-midwife as
3 provided in subdivision (a).

4 (4) (A) "Technical supportive services" means simple routine medical tasks and
5 procedures that may be safely performed by a medical assistant who has limited
6 training and who functions under the supervision of a licensed physician and surgeon
7 or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a certified
8 nurse-midwife as provided in subdivision (a).

9 (B) Notwithstanding any other law, in a facility licensed by the California State
10 Board of Pharmacy under Section 4180 or 4190, other than a facility operated by the
11 state, "technical supportive services" also includes handing to a patient a prepackaged
12 prescription drug, excluding a controlled substance, that is labeled in compliance with
13 Section 4170 and all other applicable state and federal laws and ordered by a licensed
14 physician and surgeon, a licensed podiatrist, a physician assistant, a nurse
15 practitioner, or a certified nurse-midwife in accordance with subdivision (a). In every
16 instance, prior to handing the medication to a patient pursuant to this subparagraph,
17 the properly labeled and prepackaged prescription drug shall have the patient's name
18 affixed to the package and a licensed physician and surgeon, a licensed podiatrist, a
19 physician assistant, a nurse practitioner, or a certified nurse-midwife shall verify that
20 it is the correct medication and dosage for that specific patient and shall provide the
21 appropriate patient consultation regarding use of the drug.

22 (c) Nothing in this section shall be construed as authorizing any of the
23 following:

24 (1) The licensure of medical assistants.

25 (2) The administration of local anesthetic agents by a medical assistant.

26 (3) The board to adopt any regulations that violate the prohibitions on diagnosis
27 or treatment in Section 2052.

28 (4) A medical assistant to perform any clinical laboratory test or examination
for which he or she is not authorized by Chapter 3 (commencing with Section 1200).

(5) A nurse practitioner, certified nurse-midwife, or physician assistant to be a
laboratory director of a clinical laboratory, as those terms are defined in paragraph (8)
of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

(d) A nurse practitioner, certified nurse-midwife, or physician assistant shall not
authorize a medical assistant to perform any clinical laboratory test or examination
for which the medical assistant is not authorized by Chapter 3 (commencing with
Section 1200). A violation of this subdivision constitutes unprofessional conduct.

(e) Notwithstanding any other law, a medical assistant shall not be employed
for inpatient care in a licensed general acute care hospital, as defined in subdivision
(a) of Section 1250 of the Health and Safety Code.

12. Section 2070 of the Code states:

Notwithstanding any other provision of law, a medical assistant may perform
venipuncture or skin puncture for the purposes of withdrawing blood upon specific
authorization and under the supervision of a licensed physician and surgeon or a

1 licensed podiatrist, or a physician assistant, a nurse practitioner, or a nurse-midwife as
2 provided in subdivision (a) of Section 2069, if prior thereto the medical assistant has
3 had at least the minimum amount of hours of appropriate training pursuant to
4 standards established by the Division of Licensing. The medical assistant shall be
5 issued a certificate by the training institution or instructor indicating satisfactory
6 completion of the training required. A copy of the certificate shall be retained as a
7 record by each employer of the medical assistant.

8
9 13. Section 4022 of the Code states:

10 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
11 self-use in humans or animals, and includes the following:

12 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
13 without prescription," "Rx only," or words of similar import.

14 (b) Any device that bears the statement: "Caution: federal law restricts this
15 device to sale by or on the order of a _____," "Rx only," or words of similar import,
16 the blank to be filled in with the designation of the practitioner licensed to use or
17 order use of the device.

18 (c) Any other drug or device that by federal or state law can be lawfully
19 dispensed only on prescription or furnished pursuant to Section 4006.

20 14. Section 4040 of the Code states:

21 (a) "Prescription" means an oral, written, or electronic transmission order that is
22 both of the following:

23 (1) Given individually for the person or persons for whom ordered that includes
24 all of the following:

25 (A) The name or names and address of the patient or patients.

26 (B) The name and quantity of the drug or device prescribed and the directions
27 for use.

28 (C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name,
address, and telephone number of the prescriber, the prescriber's license
classification, and the prescriber's federal registry number, if a controlled substance is
prescribed.

(E) A legible, clear notice of the condition or purpose for which the drug is
being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified
nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who
issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5,
respectively, or the pharmacist who issues a drug order pursuant to Section 4052.1,
4052.2, or 4052.6.

(2) Issued by a physician, dentist, optometrist, doctor of podiatric medicine,
veterinarian, nurse practitioner practicing pursuant to Section 2837.103 or 2837.104,
or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued

1 pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife,
2 nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or
3 pursuant to Section 4052.1, 4052.2, or 4052.6 by a pharmacist licensed in this state.

4 (b) Notwithstanding subdivision (a), a written order of the prescriber for a
5 dangerous drug, except for any Schedule II controlled substance, that contains at least
6 the name and signature of the prescriber, the name and address of the patient in a
7 manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the
8 Health and Safety Code, the name and quantity of the drug prescribed, directions for
9 use, and the date of issue may be treated as a prescription by the dispensing
10 pharmacist as long as any additional information required by subdivision (a) is readily
11 retrievable in the pharmacy. In the event of a conflict between this subdivision and
12 Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety
13 Code shall prevail.

14 (c) "Electronic transmission prescription" includes both image and data
15 prescriptions. "Electronic image transmission prescription" means any prescription
16 order for which a facsimile of the order is received by a pharmacy from a licensed
17 prescriber. "Electronic data transmission prescription" means any prescription order,
18 other than an electronic image transmission prescription, that is electronically
19 transmitted from a licensed prescriber to a pharmacy.

20 (d) The use of commonly used abbreviations shall not invalidate an otherwise
21 valid prescription.

22 COST RECOVERY

23 15. Section 125.3 of the Code states:

24 (a) Except as otherwise provided by law, in any order issued in resolution of a
25 disciplinary proceeding before any board within the department or before the
26 Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
27 administrative law judge may direct a licensee found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the
order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where
actual costs are not available, signed by the entity bringing the proceeding or its
designated representative shall be prima facie evidence of reasonable costs of
investigation and prosecution of the case. The costs shall include the amount of
investigative and enforcement costs up to the date of the hearing, including, but not
limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount
of reasonable costs of investigation and prosecution of the case when requested
pursuant to subdivision (a). The finding of the administrative law judge with regard to
costs shall not be reviewable by the board to increase the cost award. The board may
reduce or eliminate the cost award, or remand to the administrative law judge if the
proposed decision fails to make a finding on costs requested pursuant to subdivision
(a).

(e) If an order for recovery of costs is made and timely payment is not made as
directed in the board's decision, the board may enforce the order for repayment in any

1 appropriate court. This right of enforcement shall be in addition to any other rights
2 the board may have as to any licensee to pay costs.

3 (f) In any action for recovery of costs, proof of the board's decision shall be
4 conclusive proof of the validity of the order of payment and the terms for payment.

5 (g) (1) Except as provided in paragraph (2), the board shall not renew or
6 reinstate the license of any licensee who has failed to pay all of the costs ordered
7 under this section.

8 (2) Notwithstanding paragraph (1), the board may, in its discretion,
9 conditionally renew or reinstate for a maximum of one year the license of any
10 licensee who demonstrates financial hardship and who enters into a formal agreement
11 with the board to reimburse the board within that one-year period for the unpaid
12 costs.

13 (h) All costs recovered under this section shall be considered a reimbursement
14 for costs incurred and shall be deposited in the fund of the board recovering the costs
15 to be available upon appropriation by the Legislature.

16 (i) Nothing in this section shall preclude a board from including the recovery of
17 the costs of investigation and enforcement of a case in any stipulated settlement.

18 (j) This section does not apply to any board if a specific statutory provision in that board's
19 licensing act provides for recovery of costs in an administrative disciplinary proceeding.

20 FACTUAL ALLEGATIONS

21 16. At all times relevant to the allegations herein, Respondent was a licensed physician
22 practicing in the area of obstetrics and gynecology (OB/GYN). Respondent was also the owner
23 of a medical clinic where he employed two medical assistants. The patient population was
24 primarily comprised of women who were pregnant, seeking family planning care, or treatment for
25 sexually transmitted diseases (STD). The medical assistants were often on-site at the clinic,
26 managing patients without the supervision of Respondent or any other licensed medical
27 professional. Patient progress notes from the clinic were often only signed by a medical assistant,
28 and not any licensed medical professional.

17. Respondent admitted in an interview with representatives of the California
Department of Health and Safety ("DHS") that his medical assistants would draw blood from
patients when he was not present onsite. DHS representatives also discovered that pre-signed
prescription forms (pre-stamped with an imprint of his signature) for dangerous drugs (as defined

1 in Code section 4022), such as antibiotics, antivirals, and birth control,¹ were kept at
2 Respondent's clinic.

3 **Patient 1**

4 18. On or about July 30, 2018, Patient 1,² a 20-year-old pregnant female, presented to
5 Respondent. At this visit, Respondent performed a physical exam, but failed to document the
6 exam. During an interview with Board investigators, Respondent admitted that he failed to
7 document that examination.

8 19. During his interview, Respondent admitted that he had cared for Patient 1 throughout
9 her pregnancy and delivered the patient's baby. When Patient 1 returned to Respondent's clinic
10 after she had delivered her baby, on or about May 20, 2019, Respondent failed to document any
11 information whatsoever regarding the delivery of Patient 1's baby (e.g., vaginal vs. C-section,
12 successful vs unsuccessful). Respondent also admitted at the interview that his medical record
13 charting for the visit on May 20, 2019 was "not good."

14 20. Many of the chart notes in Respondent's medical records for Patient 1 were illegible
15 and either not signed by Respondent or stamped with an imprint of Respondent's signature.

16 **Patient 2**

17 21. Patient 2, an 18-year-old female, first presented to Respondent's clinic on or about
18 April 9, 2018. In general, her care consisted of family planning and birth control.

19 22. Many of the chart notes in Respondent's medical records for Patient 2 were illegible
20 and either not signed by Respondent or stamped with an imprint of Respondent's signature. On
21 occasion, progress notes were signed only by a medical assistant, and not any licensed medical
22 professional.

23 **Patient 3**

24 23. Patient 3, a 31-year-old female, first presented to Respondent's clinic on or about
25 August 5, 2017. In general, her care consisted of family planning, STD testing, and birth control.

26 ¹ Examples of medications listed on the form include Bactrim DS, Cipro, Flagyl, Keflex,
27 Macrobid, Zithromax, Acyclovir, Loestrin, NuvaRing, Ortho Tri-Cycle, Diflucan, and Terazol,
28 which are all "dangerous drugs" pursuant to Code section 4022 requiring a prescription by a
physician.

² Patients are referred to by number to protect their privacy.

1 24. Respondent's chart for Patient 3 contained multiple progress notes signed only by a
2 medical assistant, and not any licensed medical professional. Other notes in the chart were either
3 not signed by Respondent or stamped with an imprint of Respondent's signature.

4 **Patient 4**

5 25. Patient 4, a 19-year-old female, first presented to Respondent's clinic on or about
6 June 10, 2017. In general, her care consisted of family planning, STD testing, and birth control
7 prescriptions from Respondent's clinic.

8 26. Respondent's chart for Patient 4 contained multiple progress notes signed only by a
9 medical assistant, and not any licensed medical professional. Other notes in the chart were either
10 not signed by Respondent or stamped with an imprint of Respondent's signature.

11 27. Although Patient 4 underwent HIV testing conducted at Respondent's clinic, a
12 consent form for that testing is missing from the chart.

13 **Patient 5**

14 28. Patient 5, a 21-year-old female, first presented to Respondent's clinic on or about
15 November 29, 2016. In general, her care consisted of family planning and birth control.

16 29. Respondent's chart for Patient 5 contained multiple progress notes signed only by a
17 medical assistant, and not any licensed medical professional. Other notes in the chart were
18 illegible and either not signed by Respondent or stamped with an imprint of Respondent's
19 signature.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Aiding and Abetting the Unlicensed Practice of Medicine)**

22 30. Respondent is subject to disciplinary action under sections 2264, 2069, 2070, 2234,
23 subdivision (a), and sections 2052, subdivision (b), and 125, of the Code, in that he aided and
24 abetted the unlicensed practice of medicine by medical assistants. The circumstances are as
25 follows:

26 31. Complainant refers to and, by this reference, incorporates paragraphs 16 through 29
27 inclusive, above, as though set forth fully herein.

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 32. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
4 the Code in that he committed gross negligence in his care and treatment of Patients 1 through 5.
5 The circumstances are as follows:

6 33. Complainant refers to and, by this reference, incorporates paragraphs 16 through 29
7 inclusive, above, as though set forth fully herein.

8 34. Respondent committed extreme departures from the standard of care in his care and
9 treatment of each of Patients 1, 2, 3, 4, and 5, by either failing to perform an examination on these
10 patients and/or allowing his medical assistants to document progress notes, when there was no
11 indication these patients were seen by Respondent.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Repeated Negligent Acts)**

14 35. Respondent's license is subject to disciplinary action under section 2234, subdivision
15 (c), of the Code in that he committed repeated negligent acts in his care and treatment of Patients
16 1 through 5, inclusive. The circumstances are as follows:

17 36. The allegations of the Second Cause for Discipline are incorporated by reference as if
18 fully set forth herein.

19 37. The acts and/or omissions by Respondent set forth in the Second Cause for Discipline
20 with respect to Patients 1 through 5, inclusive, either collectively or in any combination thereof,
21 constitute repeated negligent acts.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Violation of Statutes Regulating Drugs)**

24 38. Respondent's license is subject to disciplinary action under sections 2238 and 4040 of
25 the Code in that he violated California statutes regulating "dangerous drugs," as defined in section
26 4022 of the Code. The circumstances are as follows:

27 39. Complainant refers to and, by this reference, incorporates paragraphs 16 through 29
28 inclusive, above, as though set forth fully herein.

1 40. As defined by section 4022 of the Code, a "dangerous drug" includes any drug
2 lawfully dispensed only pursuant to a prescription.

3 41. Respondent's clinic had prescription forms for "dangerous drugs" within the meaning
4 of section 4022, such as antibiotics, antivirals, and birth control, that were pre-stamped with an
5 imprint of Respondent's signature, thus violating section 4040 of the Code.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Inadequate Medical Record Keeping)**

8 42. Respondent is subject to disciplinary action under section 2266 of the Code in that he
9 failed to maintain adequate and accurate records relating to the care and treatment of Patients 1
10 through 5. The circumstances are as follows:

11 43. Complainant refers to and, by this reference, incorporates paragraphs 16 through 29
12 inclusive, above, as though set forth fully herein.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(General Unprofessional Conduct)**

15 44. Respondent is subject to disciplinary action under sections 2234 and 2234,
16 subdivision (a), of the Code, in that he engaged in conduct which breached the rules or ethical
17 code of the medical profession or which was unbecoming a member in good standing of the
18 medical profession, and which demonstrates an unfitness to practice medicine, as more
19 particularly alleged in paragraphs 16 through 29, above, which are hereby incorporated by
20 reference and realleged as if fully set forth herein.

21 **PRAYER**

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

24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 76854,
25 issued to Respondent Zelalem Tesfay, M.D.;

26 2. Revoking, suspending or denying approval of Respondent Zelalem Tesfay, M.D.'s
27 authority to supervise physician assistants and advanced practice nurses;

28 3. Ordering Respondent Zelalem Tesfay, M.D., to pay the Board the costs of the

1 investigation and enforcement of this case, and if placed on probation, the costs of probation
2 monitoring;

3 4. Ordering Respondent Zelalem Tesfay, M.D., if placed on probation, to provide
4 patient notification in accordance with Business and Professions Code section 2228.1; and

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

6
7 DATED: OCT 04 2023

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

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