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

In the Matter of the Accusation Against: **IVAR EDWARD ROTH, D.P.M.** 485 E. 17th Street, Suite 500 Costa Mesa, CA 92627 Doctor of Podiatric Medicine License No. E-2628, Respondent.	Case No. 500-2022-001227 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Brian Naslund (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Podiatric Medical Board, Department of Consumer Affairs (Board).

2. On or about June 13, 1980, the Board issued Podiatrist License No. E-2628 to Ivar Edward Roth, D.P.M. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2026, 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 2222 of the Code states:

> The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.
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> The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

5. Section 2234 of the Code, states, in pertinent part:

> 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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> ...
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> (b) Gross negligence.
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> (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.
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> (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.
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> (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.

...

6. 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.

7. Section 2415 of the Code states, in pertinent part:

> (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.
>
> ...

COST RECOVERY

8. Section 2497.5 of the Code states:

> (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.
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> (b) The costs to be assessed shall be fixed by the administrative law judge and shall not be increased by the board unless the board does not adopt a proposed decision and in making its own decision finds grounds for increasing the costs to be assessed, not to exceed the actual and reasonable costs of the investigation and prosecution of the case.
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> (c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.
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> (d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
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> (e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.
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> (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

FACTUAL ALLEGATIONS

9. On or about February 22, 2023, investigators with the Health Quality Investigation Unit (HQIU) on behalf of the Board visited Respondent's place of business. In the patient seating area, Investigator J.E. observed literature regarding PainCur. The literature featured Respondent and credited Respondent for developing a treatment, trademarked as PainCur. According to the literature, treatment with PainCur is described as involving "several injections of an FDA approved drug" to alleviate pain. The literature quotes Respondent explaining, "There is a neurological connection that exists between the foot and other parts of the body, including the knee, hip, back and sciatic region." Respondent goes on to explain, "The same neurological connection also exists between the hand and upper body parts."

10. During this site visit, Respondent refused to identify the components of PainCur. Respondent indicated he premixed the solution and maintained the solution in a locked cabinet. However, when requested, Respondent refused to unlock the cabinet for HQIU investigators.

11. On or about December 29, 2023, during a subject interview with HQIU Investigator J.E., Respondent described PainCur as a subcutaneous injection in the third interspace, the web space between the third and fourth toe, with a substance similar to an alcohol sclerosing injection used for neuromas. Respondent explained that while the substance was similar, the purpose of the injection of PainCur in the third interspace was different in that the purpose of PainCur was to turn off pain receptors in the upper and lower areas of the body.

12. According to the U.S. Food and Drug Administration (FDA), the ingredients contained in PainCur, bupivacaine and dexamethasone sodium phosphate, are approved by the FDA, however, the combination of the two substances for purposes of injecting into hands and feet to treat pain and identifying the combination as PainCur, PainCur X, PainCur XX, and/or PainCur XXX, are not FDA approved.

13. According to the Board's licensing records, Concierge Podiatry and Spa, operated by Respondent, does not have a past or current fictitious name permit (FNP) on file with the Board.

14. According to the Board's licensing records, Respondent previously had an FNP license for A Foot and Ankle Center, FNP License No. 12749. According to the Board's licensing records, FNP License No. 12749 was issued to Respondent on August 8, 1986, and expired on February 28, 1988.

Patient A[1]

15. On or about July 7, 2021, Patient A, a then 68-year-old female who had been previously diagnosed with fibromyalgia,[2] sought treatment with Respondent for pain management after seeing Respondent's advertisement for PainCur.[3] During Patient A's initial appointment, Respondent explained PainCur treatment consisted of regular injections, twice a week, for four to six weeks. Respondent explained the PainCur solution would be injected into Patient A's hands to address upper body pain and into Patient A's feet to address lower body pain. Respondent did not disclose to Patient A the ingredients of the PainCur solution, rather Respondent informed Patient A that PainCur was FDA approved with a pending patent.

16. According to records, Patient A reported feeling pain throughout her body at varying levels of pain. According to records, Respondent noted three specific areas: Patient A's right neck, Patient A's right elbow and wrist, and Patient A's right knee.

17. From on or about July 2021, through on or about September 2021, Patient A received regular injections of PainCur by Respondent in her hands and feet to address the pain throughout her body. Records for these visits merely indicate the date of the visit and the sequence of injections administered (i.e., "1/7, 2/7, 3/7,...") with minimal and/or no further details or description regarding the solution injected, the location of the injections, or Patient A's response or reaction to the injections.

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[1] To protect the privacy of the patients involved, the patients' names have not been included in this pleading. Respondent is aware of the identities of the patients referred to herein.

[2] Fibromyalgia is a chronic disorder that causes pain and tenderness throughout the body. It is often that characterized by widespread musculoskeletal pain combined with fatigue and sleep issues.

18. Records for Patient A's visit on or about August 12, 2021, indicate PainCur injection "8/7" was administered and noted "improvement" with no further details or description.

19. According to Patient A, the PainCur injections caused her to lose mobility in her hands.

20. On or about August 20, 2021, records for Patient A indicate a partial refund was issued to Patient A for the PainCur injections placed in Patient A's hands.

21. Records for Patient A's visit on or about August 23, 2021, indicate PainCur injection "9/7" was administered and noted a laser procedure was also performed, with no further details or description. According to Patient A, she received laser treatment by Respondent in her hands when the PainCur treatments were not effective.

22. Records for Patient A's visit on or about August 26, 2021, indicate PainCur injection "10/7" was administered and noted the injection was administered to Patient A's "feet only." Records for this visit also indicate a laser treatment was again performed, with no further details or description.

23. Records for Patient A's visit on or about August 30, 2021, indicate PainCur injection "11/7" was administered and that Patient A "saw some improvement in legs".

24. Records for Patient A's visit on or about September 7, 2021, indicate PainCur injection "#13" was administered and that Patient A reported her hands were doing better, but her right and left knees were still sore.

25. Records for Patient A's visit on or about September 10, 2021, indicate PainCur injection "14" was administered and that Patient A reported less pain in her legs.

26. Records for Patient A's visit on or about September 13, 2021, indicate the final PainCur injection "#15" was administered with no further details or description.

27. Patient A developed a mass in her foot and discontinued PainCur treatments.

28. On or about October 9, 2021, Patient A signed an agreement to release all claims against Respondent for all her PainCur treatments received from Respondent. According to the agreement, Patient A was prohibited from discussing her PainCur treatments with anyone. After signing the agreement, Patient A received a full refund from Respondent.

Patient B

29. On or about August 30, 2021, Patient B, a then 70-year-old male who suffered severe hip pain due to arthritis, sought treatment with Respondent for pain management after seeing Respondent's advertisement for PainCur. According to Patient B, Respondent indicated he was working on getting FDA approval for PainCur.

30. According to records, Patient B reported feeling pain in his hip area. No other area of pain was identified by Patient B.

31. From on or about August 2021, through on or about October 2021, Patient B received regular injections of PainCur by Respondent in his feet to address his hip pain. Records for these visits merely indicate the date of the visit and the sequence of injections administered (i.e., "1/7, 2/7, 3/7,...") with minimal and/or no further details or description regarding the solution injected, the location of the injections, or Patient B's response or reaction to the injections.

32. Records for Patient B's visit on or about September 10, 2021, indicate PainCur injection "5/7" was administered and noted a laser procedure was performed, with no further details or description. According to Patient B, he received laser treatment by Respondent on his hips.

33. Records for Patient B's visit on or about September 24, 2021, indicate PainCur injection "10/7" was administered and noted a laser procedure was again performed, with no further details or description.

34. Records for Patient B's visit on October 22, 2021, indicate the final PainCur injection "14/7" was administered with no further details or description.

Patient C

35. On or about April 4, 2019, Patient C, a then 60-year-old male, sought treatment with Respondent for various issues in his feet.

36. In or around July 2021, Patient C underwent a series of PainCur injections provided by Respondent to relieve Patient C's chronic back pain.

37. Records for Patient C provided by Respondent failed to document any treatment records for PainCur injections administered to Patient C.

38. During his subject interview with HQIU investigators, Respondent admitted providing weekly injections of PainCur in Patient C's feet and claimed the PainCur injections successfully relieved Patient C's back pain.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

39. Respondent has subjected his Podiatrist License No. E-2628 to disciplinary action under section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patients A, B, and C, as more particularly alleged hereinafter.

40. Paragraphs 9 through 38, above, are hereby incorporated by reference and realleged as if fully set forth herein.

Patient A

41. Respondent committed gross negligence in that he failed to clearly inform Patient A that PainCur was not FDA-approved.

42. Respondent committed gross negligence in that he failed to clearly inform Patient A what substances were mixed together to create PainCur and/or that the use of these substances in PainCur was an off-label use in order to obtain proper informed consent.

43. Respondent committed gross negligence in that he administered injections of PainCur to Patient A's hands for the purpose of treating pain in Patient A's upper body caused by fibromyalgia, which is beyond the scope and practice of a podiatrist.

44. Respondent committed gross negligence in that he administered laser treatments to Patient A's hands, which is beyond the scope and practice of a podiatrist.

45. Respondent committed gross negligence in that he administered injections of PainCur to Patient A's feet for the purpose of treating pain in Patient A's lower body caused fibromyalgia, which is beyond the scope and practice of a podiatrist.

46. Respondent committed gross negligence in that he failed to maintain adequate and/or accurate records of his care and treatment of Patient A, including, but not limited to, failing to clearly document an assessment, evaluation, diagnosis, plan, treatment and progress of treatment, throughout his care and treatment of Patient A.

Patient B

47. Respondent committed gross negligence in that he failed to clearly inform Patient B that PainCur was not FDA-approved.

48. Respondent committed gross negligence in that he failed to clearly inform Patient B what substances were mixed together to create PainCur and/or that the use of these substances in PainCur was an off-label use in order to obtain proper informed consent.

49. Respondent committed gross negligence in that he administered injections of PainCur to Patient B's feet for the purpose of treating Patient B's hip pain, which is beyond the scope and practice of a podiatrist.

50. Respondent committed gross negligence in that he administered laser treatments to Patient B's hip area, which is beyond the scope and practice of a podiatrist.

51. Respondent committed gross negligence in that he failed to maintain adequate and/or accurate records of his care and treatment of Patient B, including, but not limited to, failing to clearly document an assessment, evaluation, diagnosis, plan, treatment and progress of treatment, throughout his care and treatment of Patient B.

Patient C

52. Respondent committed gross negligence in that he failed to clearly inform Patient C that PainCur was not FDA-approved.

53. Respondent committed gross negligence in that he failed to clearly inform Patient C what substances were mixed together to create PainCur and/or that the use of these substances in PainCur was an off-label use in order to obtain proper informed consent.

54. Respondent committed gross negligence in that he administered injections of PainCur to Patient C's feet for the purpose of treating Patient C's chronic back pain, which is beyond the scope and practice of a podiatrist.

55. Respondent committed gross negligence in that he failed to maintain adequate and/or accurate records of his care and treatment of Patient C, including, but not limited to, failing to clearly document an assessment, evaluation, diagnosis, plan, treatment and progress of treatment, throughout his care and treatment of Patient C.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

56. Respondent has further subjected his Podiatrist License No. E-2628 to disciplinary action under section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts as more particularly alleged hereinafter.

57. Paragraphs 9 through 55, above, are hereby incorporated by reference and realleged as if fully set forth herein.

58. Respondent committed repeated negligent acts in that he failed to put in place and/or maintain clear protocols and policies for mixing substances into a solution he referred to as PainCur, including, but not limited to, failing to identify solution concentrations, identifying bottles only as PainCur X, PainCur XX, and/or PainCur XXX, failing to clearly label bottles with expiration dates, and failing to maintain clear protocols or policies regarding storage of the various solutions.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and/or Accurate Records)

59. Respondent has further subjected his Podiatrist License No. E-2628 to disciplinary action under section 2266, of the Code, in that Respondent failed to maintain adequate and/or accurate records in his care and treatment of Patients A, B, and C, as more particularly alleged in paragraphs 9 through 58, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain a Current Fictitious Name Permit)

60. Respondent has further subjected his Podiatrist License No. E-2628 to disciplinary action under section 2415, subdivision (a), of the Code, in that Respondent failed to maintain a current fictious name permit with the Board, as more particularly alleged in paragraphs 9 through 59, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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FIFTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

61. Respondent has further subjected his Podiatrist License No. E-2628 to disciplinary action under section 2234, of the Code, in that Respondent engaged in conduct which breached the rules or ethical code of the medical profession or which was unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, in his care and treatment of Patients A, B, and C, as more particularly alleged in paragraphs 9 through 60, above, which are hereby incorporated by reference and realleged 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 Board issue a decision:

1. Revoking or suspending Podiatrist License No. E-2628, issued to Respondent Ivar Edward Roth, D.P.M.;

2. Ordering Respondent Ivar Edward Roth, D.P.M., to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. Ordering Respondent Ivar Edward Roth, D.P.M., if placed on probation, to pay the costs of probation monitoring; and

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

DATED: OCT 22 2024

BRIAN NASLUND
Executive Officer
Podiatric Medical Board
Department of Consumer Affairs
State of California
Complainant

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