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7

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

11 In the Matter of the Accusation Against:

Case No. 500-2018-000703

12 **ROBERT JOHN JOSEPH II, D.P.M.**
13 150 North Robertson Blvd., Suite 300
Beverly Hills, CA 90211

ACCUSATION

14 Doctor of Podiatric Medicine License
15 No. E 4013,

16 Respondent.

17 **PARTIES**

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

21 2. On or about July 8, 1996, the Podiatric Medical Board issued Podiatrist License
22 Number E 4013 to Robert John Joseph II, D.P.M. ("Respondent"). The Podiatrist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
24 2024, unless renewed.

25 **JURISDICTION**

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

1 ("Code") unless otherwise indicated.

2 4. Section 2222 of the Code states:

3 The California Board of Podiatric Medicine shall enforce and administer this
4 article as to doctors of podiatric medicine. Any acts of unprofessional conduct or
5 other violations proscribed by this chapter are applicable to licensed doctors of
6 podiatric medicine and wherever the Medical Quality Hearing Panel established
7 under Section 11371 of the Government Code is vested with the authority to enforce
8 and carry out this chapter as to licensed physicians and surgeons, the Medical Quality
9 Hearing Panel also possesses that same authority as to licensed doctors of podiatric
10 medicine.

11 The California Board of Podiatric Medicine may order the denial of an
12 application or issue a certificate subject to conditions as set forth in Section 2221, or
13 order the revocation, suspension, or other restriction of, or the modification of that
14 penalty, and the reinstatement of any certificate of a doctor of podiatric medicine
15 within its authority as granted by this chapter and in conjunction with the
16 administrative hearing procedures established pursuant to Sections 11371, 11372,
17 11373, and 11529 of the Government Code. For these purposes, the California Board
18 of Podiatric Medicine shall exercise the powers granted and be governed by the
19 procedures set forth in this chapter.

20 5. Section 2497 of the Code states:

21 (a) The board may order the denial of an application for, or the suspension of,
22 or the revocation of, or the imposition of probationary conditions upon, a certificate
23 to practice podiatric medicine for any of the causes set forth in Article 12
24 (commencing with Section 2220) in accordance with Section 2222.

25 (b) The board may hear all matters, including but not limited to, any contested
26 case or may assign any such matters to an administrative law judge. The proceedings
27 shall be held in accordance with Section 2230. If a contested case is heard by the
28 board itself, the administrative law judge who presided at the hearing shall be present
during the board's consideration of the case and shall assist and advise the board.

29 6. Section 2228 of the Code states:

30 The authority of the board or the California Board of Podiatric Medicine to
31 discipline a licensee by placing him or her on probation includes, but is not limited to,
32 the following:

33 (a) Requiring the licensee to obtain additional professional training and to pass
34 an examination upon the completion of the training. The examination may be written
35 or oral, or both, and may be a practical or clinical examination, or both, at the option
36 of the board or the administrative law judge.

37 (b) Requiring the licensee to submit to a complete diagnostic examination by
38 one or more physicians and surgeons appointed by the board. If an examination is
ordered, the board shall receive and consider any other report of a complete
diagnostic examination given by one or more physicians and surgeons of the
licensee's choice.

1 (c) Restricting or limiting the extent, scope, or type of practice of the licensee,
including requiring notice to applicable patients that the licensee is unable to perform
2 the indicated treatment, where appropriate.

3 (d) Providing the option of alternative community service in cases other than
violations relating to quality of care.

4 7. Section 2228.1 of the Code states:

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

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

12 (A) The commission of any act of sexual abuse, misconduct, or relations
13 with a patient or client as defined in Section 726 or 729.

14 (B) Drug or alcohol abuse directly resulting in harm to patients or the extent
15 that such use impairs the ability of the licensee to practice safely.

16 (C) Criminal conviction directly involving harm to patient health.

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

18 (2) An accusation or statement of issues alleged that the licensee committed
19 any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1),
and a stipulated settlement based upon a nolo contendere or other similar
20 compromise that does not include any prima facie showing or admission of guilt or
fact but does include an express acknowledgment that the disclosure requirements
21 of this section would serve to protect the public interest.

22 (b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
obtain from the patient, or the patient's guardian or health care surrogate, a separate,
23 signed copy of that disclosure.

24 (c) A licensee shall not be required to provide a disclosure pursuant to
subdivision (a) if any of the following applies:

25 (1) The patient is unconscious or otherwise unable to comprehend the
disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
26 guardian or health care surrogate is unavailable to comprehend the disclosure and
sign the copy.

27 (2) The visit occurs in an emergency room or an urgent care facility or the
28 visit is unscheduled, including consultations in inpatient facilities.

1 (3) The licensee who will be treating the patient during the visit is not known
to the patient until immediately prior to the start of the visit.

2 (4) The licensee does not have a direct treatment relationship with the patient.

3 (d) On and after July 1, 2019, the board shall provide the following
4 information, with respect to licensees on probation and licensees practicing under
probationary licenses, in plain view on the licensee's profile page on the board's
5 online license information Internet Web site.

6 (1) For probation imposed pursuant to a stipulated settlement, the causes
alleged in the operative accusation along with a designation identifying those causes
7 by which the licensee has expressly admitted guilt and a statement that acceptance
of the settlement is not an admission of guilt.

8 (2) For probation imposed by an adjudicated decision of the board, the causes
9 for probation stated in the final probationary order.

10 (3) For a licensee granted a probationary license, the causes by which the
probationary license was imposed.

11 (4) The length of the probation and end date.

12 (5) All practice restrictions placed on the license by the board.
13 (e) Section 2314 shall not apply to this section.

14 STATUTORY PROVISIONS

15 8. Section 2234 of the Code, states:

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

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

20 ...

21 9. Unprofessional conduct under Business and Professions Code section 2234 is conduct
22 which breaches the rules or ethical code of the medical profession, or conduct which is
23 unbecoming to a member in good standing of the medical profession, and which demonstrates an
24 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 546,
25 575.)

26 10. Section 2236 of the Code states:

27 (a) The conviction of any offense substantially related to the qualifications,
28 functions, or duties of a physician and surgeon constitutes unprofessional conduct
within the meaning of this chapter. The record of conviction shall be conclusive

1 evidence only of the fact that the conviction occurred.

2 (b) The district attorney, city attorney, or other prosecuting agency shall notify
3 the Division of Medical Quality of the pendency of an action against a licensee
4 charging a felony or misdemeanor immediately upon obtaining information that the
5 defendant is a licensee. The notice shall identify the licensee and describe the crimes
6 charged and the facts alleged. The prosecuting agency shall also notify the clerk of
7 the court in which the action is pending that the defendant is a licensee, and the clerk
8 shall record prominently in the file that the defendant holds a license as a physician
9 and surgeon.

6 (c) The clerk of the court in which a licensee is convicted of a crime shall,
7 within 48 hours after the conviction, transmit a certified copy of the record of
8 conviction to the board. The division may inquire into the circumstances surrounding
9 the commission of a crime in order to fix the degree of discipline or to determine if
10 the conviction is of an offense substantially related to the qualifications, functions, or
11 duties of a physician and surgeon.

10 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this section and Section 2236.1.
12 The record of conviction shall be conclusive evidence of the fact that the conviction
13 occurred.

12 11. Section 490 of the Code states:

13 (a) In addition to any other action that a board is permitted to take against a
14 licensee, a board may suspend or revoke a license on the ground that the licensee has
15 been convicted of a crime, if the crime is substantially related to the qualifications,
16 functions, or duties of the business or profession for which the license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise any
17 authority to discipline a licensee for conviction of a crime that is independent of the
18 authority granted under subdivision (a) only if the crime is substantially related to the
19 qualifications, functions, or duties of the business or profession for which the
20 licensee's license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of
20 guilty or a conviction following a plea of nolo contendere. Any action that a board is
21 permitted to take following the establishment of a conviction may be taken when the
22 time for appeal has elapsed, or the judgment of conviction has been affirmed on
23 appeal, or when an order granting probation is made suspending the imposition of
24 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
25 the Penal Code.

23 (d) The Legislature hereby finds and declares that the application of this section
24 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
25 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
26 number of statutes and regulations in question, resulting in potential harm to the
27 consumers of California from licensees who have been convicted of crimes.
28 Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

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1 12. Section 493 of the Code states:

2 (a) Notwithstanding any other law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a
6 crime substantially related to the qualifications, functions, and duties of the licensee
7 in question, the record of conviction of the crime shall be conclusive evidence of the
8 fact that the conviction occurred, but only of that fact.

9 (b) (1) Criteria for determining whether a crime is substantially related to the
10 qualifications, functions, or duties of the business or profession the board regulates
11 shall include all of the following:

12 (A) The nature and gravity of the offense.

13 (B) The number of years elapsed since the date of the offense.

14 (C) The nature and duties of the profession.

15 (2) A board shall not categorically bar an applicant based solely on the type of
16 conviction without considering evidence of rehabilitation.

17 (c) As used in this section, "license" includes "certificate," "permit,"
18 "authority," and "registration."

19 ...

20 (e) This section shall become operative on July 1, 2020.

21 REGULATORY PROVISIONS

22 13. California Code of Regulations, title 16, section 1360, states:

23 For the purposes of denial, suspension or revocation of a license, certificate or
24 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
25 or act shall be considered to be substantially related to the qualifications, functions or
26 duties of a person holding a license, certificate or permit under the Medical Practice
27 Act if to a substantial degree it evidences present or potential unfitness of a person
28 holding a license, certificate or permit to perform the functions authorized by the
license, certificate or permit in a manner consistent with the public health, safety or
welfare. Such crimes or acts shall include but not be limited to the following:
Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate any provision of the Medical Practice Act.

29 COST RECOVERY

30 14. Section 2497.5 of the Code states:

31 (a) The board may request the administrative law judge, under his or her
32 proposed decision in resolution of a disciplinary proceeding before the board, to
33 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
34 not to exceed the actual and reasonable costs of the investigation and prosecution of
35 the case.

1 (b) The costs to be assessed shall be fixed by the administrative law judge and
2 shall not be increased by the board unless the board does not adopt a proposed
3 decision and in making its own decision finds grounds for increasing the costs to be
4 assessed, not to exceed the actual and reasonable costs of the investigation and
5 prosecution of the case.

6 (c) When the payment directed in the board's order for payment of costs is not
7 made by the licensee, the board may enforce the order for payment by bringing an
8 action in any appropriate court. This right of enforcement shall be in addition to any
9 other rights the board may have as to any licensee directed to pay costs.

10 (d) In any judicial action for the recovery of costs, proof of the board's decision
11 shall be conclusive proof of the validity of the order of payment and the terms for
12 payment.

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

16 (2) Notwithstanding paragraph (1), the board may, in its discretion,
17 conditionally renew or reinstate for a maximum of one year the license of any
18 licensee who demonstrates financial hardship and who enters into a formal agreement
19 with the board to reimburse the board within one year period for those unpaid costs.

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

23 FIRST CAUSE FOR DISCIPLINE

24 (Conviction of a Crime)

25 15. Respondent Robert John Joseph II, D.P.M. is subject to disciplinary action under
26 Code sections 490, 493, and 2236; and California Code of Regulations, title 16, section 1360, in
27 that he was convicted of a crime substantially related to the qualifications, functions, or duties of
28 a doctor of podiatric medicine when he was convicted of violating 18 U.S.C. § 371 (Conspiracy),
a felony. The circumstances are as follows:

16. On May 24, 2018, in the case of *United States of America v. Irena Shut, Domenic
Signorelli, and Robert Joseph*, United States District Court for the Central District of California,
case number 2:18-cr-00315 RGK, Respondent was charged with violating 18 U.S.C. § 371
(Conspiracy), a felony (Count 1). The Indictment alleged, in pertinent part, as follows:

A. Respondent was a conspirator in a plan to defraud various government health
care programs. Specifically, Respondent wrote compound drug prescriptions for
patients that he caused to be routed to certain co-conspirator pharmacies for

1 dispensing in exchange for kickback payments (“Kickback Tainted
2 Prescriptions”).

3 B. “Compounding” is a practice in which a licensed professional (e.g., pharmacist
4 or physician) combines, mixes or alters ingredients of a drug or multiple drugs to
5 create drugs tailored to the needs of an individual patient. Compounded drugs
6 are not FDA-approved. Compounded drugs can be prescribed when no FDA-
7 approved drug meets the health needs of a particular patient. For example, if a
8 patient is allergic to a specific ingredient in an FDA-approved medication, such
9 as a dye, a compound drug can be prescribed and prepared that excludes the
10 ingredient. As another example, compounded drugs are also used when a patient
11 cannot consume a medication by traditional means (e.g. needs liquid in place of
12 a pill).

13 C. The co-conspirator pharmacies to whom Respondent routed his patients’
14 compound prescriptions would then send, by mail, the compounded drugs and
15 other pharmaceuticals prescribed by Respondent to patient-beneficiaries, and
16 submit claims for reimbursement to various government health care programs.
17 Those government programs included: 1) the Defense Health Agency’s program
18 of health care coverage (“TRICARE”) for Department of Defense beneficiaries
19 worldwide, including active duty service members, National Guard and Reserve
20 members, retirees, their families, and survivors; 2) the Federal Employees’
21 Compensation Act (“FECA”) program, which provides benefits (including
22 reimbursement for prescription medication) to civilian employees of the United
23 States for wage-loss disability due to traumatic injury or occupational disease
24 while working as a federal employee; and 3) the California Workers’
25 Compensation System, which provides insurance coverage for treatment of
26 injury or illness suffered by individuals during the course of their employment
27 (collectively, “Affected Health Care Plans”).

28 ///

1 D. Respondent's co-conspirators used reimbursements received from the Affected
2 Health Care Plans for the Kickback Tainted Prescriptions to pay Respondent's
3 kickbacks.

4 E. In addition to kickbacks and bribes, Respondent received other inducements
5 from his co-conspirators in exchange for authorizing pre-printed prescriptions
6 for compound drugs: (a) with no prior physician/patient relationship with the
7 beneficiaries; (b) without the knowledge or consent of the purported
8 beneficiaries; and/or (c) without meaningfully considering a far less expensive
9 FDA-approved (i.e., non-compounded) prescription drug for the patient.

10 F. Respondent concealed material information from his patients and the Affected
11 Health Care Plans, including that the compound prescriptions were part of a
12 kickback scheme.

13 G. In furtherance of the conspiracy, Respondent's co-conspirators submitted claims
14 for reimbursement on Kickback Tainted Prescriptions seeking in excess of \$250
15 million from the Affected Health Care Plans.

16 H. From in or around April 2014 through in or around July 2016, Respondent was
17 paid approximately \$332,500, in exchange for authorizing Kickback Tainted
18 Prescriptions, which were dispensed by his co-conspirator pharmacies and for
19 which the Affected Health Care Plans reimbursed Respondent's co-conspirators
20 approximately \$1.3 million.

21 17. On or about July 25, 2022, Respondent was convicted, by way of a plea of guilty, of
22 Count 1 as charged in the Indictment.

23 18. On or about July 25, 2022, the United States District Court sentenced Respondent to
24 (2) years of probation with terms and conditions, including 600 hours of community service, and
25 ordered him to pay fees and a fine of \$10,000. The Court also entered a money judgment of
26 forfeiture against Respondent in the amount of \$332,500. Further, and pursuant to the terms of
27 his probation, Respondent "shall not be employed in any position that requires licensing and/or
28 certification by any local, state, or federal agency without the prior written approval of the

1 Probation Officer.”

2 19. On or about August 8, 2022, Respondent caused a Criminal Action Reporting Form
3 to be filed with the Board. That form advised the Board that Respondent had been convicted of a
4 felony violation of 18 U.S.C. § 371 (Conspiracy).

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(General Unprofessional Conduct)**

7 20. Respondent Robert John Joseph II, D.P.M. is subject to disciplinary action under
8 Code section 2234, generally, in that he has engaged in conduct which breaches the rules or
9 ethical code of the medical profession, or conduct which is unbecoming to a member in good
10 standing of the medical profession, and which demonstrated an unfitness to practice medicine.

11 The circumstances are as follows:

12 21. The allegations contained in the First Cause for Discipline herein are incorporated by
13 reference as if fully set forth.

14 **PRAYER**

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

17 1. Revoking or suspending Doctor of Podiatric Medicine License Number E 4013,
18 issued to Robert John Joseph II, D.P.M.;

19 2. Ordering Robert John Joseph II, D.P.M. to pay the Podiatric Medical Board the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 2497.5;

22 3. Ordering Robert John Joseph II, D.P.M., if placed on probation, to pay the Podiatric
23 Medical Board the costs of probation monitoring;

24 4. Ordering Respondent Robert John Joseph II, D.P.M., if placed on probation, to
25 provide patient notification in accordance with Business and Professions Code section 2228.1;

26 and


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

DATED: 12/08/2023



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

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