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

11 In the Matter of the Accusation Against:

Case No. 800-2020-065960

12 **KATHLEEN M. TOUPS, M.D.**
13 **2900 Camino Diablo, Ste. 200**
Walnut Creek, CA 94597-3993

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. A 45048,**

16 Respondent.

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18 **PARTIES**

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

22 2. On or about July 18, 1988, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 45048 to Kathleen M. Toups, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2024, unless renewed.

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JURISDICTION

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

5 4. Section 2220 of the Code states:

6 Except as otherwise provided by law, the board may take action against all persons guilty of
7 violating this chapter. The board shall enforce and administer this article as to physician and
8 surgeon certificate holders, including those who hold certificates that do not permit them to
9 practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate
10 holders, and the board shall have all the powers granted in this chapter for these purposes
11 including, but not limited to:

12 (a) Investigating complaints from the public, from other licensees, from health care
13 facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct.
14 The board shall investigate the circumstances underlying a report received pursuant to Section
15 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining
16 order should be issued. The board shall otherwise provide timely disposition of the reports
17 received pursuant to Section 805 and Section 805.01.

18 (b) Investigating the circumstances of practice of any physician and surgeon where there
19 have been any judgments, settlements, or arbitration awards requiring the physician and surgeon
20 or his or her professional liability insurer to pay an amount in damages in excess of a cumulative
21 total of thirty thousand dollars (\$30,000) with respect to any claim that injury or damage was
22 proximately caused by the physician's and surgeon's error, negligence, or omission.

23 (c) Investigating the nature and causes of injuries from cases which shall be reported of a
24 high number of judgments, settlements, or arbitration awards against a physician and surgeon.

25 5. Section 2221 of the Code states:

26 (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of
27 unprofessional conduct or of any cause that would subject a licensee to revocation or suspension
28 of their license. The board, in its sole discretion, may issue a probationary physician's and

1 surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to,
2 any of the following conditions of probation:

3 (1) Practice limited to a supervised, structured environment where the licensee's activities
4 shall be supervised by another physician and surgeon.

5 (2) Total or partial restrictions on drug prescribing privileges for controlled substances.

6 (3) Continuing medical or psychiatric treatment.

7 (4) Ongoing participation in a specified rehabilitation program.

8 (5) Enrollment and successful completion of a clinical training program.

9 (6) Abstention from the use of alcohol or drugs.

10 (7) Restrictions against engaging in certain types of medical practice.

11 (8) Compliance with all provisions of this chapter.

12 (9) Payment of the cost of probation monitoring.

13 (b) The board may modify or terminate the terms and conditions imposed on the
14 probationary certificate upon receipt of a petition from the licensee. The board may assign the
15 petition to an administrative law judge designated in Section 11371 of the Government Code.
16 After a hearing on the petition, the administrative law judge shall provide a proposed decision to
17 the board.

18 (c) The board shall deny a physician's and surgeon's certificate to an applicant who is
19 required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to
20 an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal
21 Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

22 (d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate
23 for a minimum of three years from the effective date of the denial of his or her application, except
24 that the board may, in its discretion and for good cause demonstrated, permit reapplication after
25 not less than one year has elapsed from the effective date of the denial.

26 (e) The board shall disclose a probationary physician's and surgeon's certificate issued
27 pursuant to this section and the operative statement of issues to an inquiring member of the public
28 and shall post the certificate and statement on the board's internet website for 10 years from

1 issuance.

2 6. Section 2234 of the Code, states in part:

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

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

8 (b) Gross negligence.

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

12 (1) An initial negligent diagnosis followed by an act or omission medically appropriate for
13 that negligent diagnosis of the patient shall constitute a single negligent act.

14 (2) When the standard of care requires a change in the diagnosis, act, or omission that
15 constitutes the negligent act described in paragraph (1), including, but not limited to, a
16 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
17 applicable standard of care, each departure constitutes a separate and distinct breach of the
18 standard of care.

19 (d) Incompetence.

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

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

23 ...

24 7. Section 2239 of the Code states:

25 (a) The use or prescribing for or administering to himself or herself, of any controlled
26 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
27 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
28 any other person or to the public, or to the extent that such use impairs the ability of the licensee

1 to practice medicine safely or more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any of the substances referred to in this section, or any
3 combination thereof, constitutes unprofessional conduct. The record of the conviction is
4 conclusive evidence of such unprofessional conduct.

5 (b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed
6 to be a conviction within the meaning of this section. The Medical Board may order discipline of
7 the licensee in accordance with Section 2227 or the Medical Board may order the denial of the
8 license when the time for appeal has elapsed or the judgment of conviction has been affirmed on
9 appeal or when an order granting probation is made suspending imposition of sentence,
10 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code
11 allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
12 setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
13 indictment.

14 8. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
15 adequate and accurate records relating to the provision of services to their patients constitutes
16 unprofessional conduct.

17 **COST RECOVERY**

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

24 **DEFINITIONS**

25 10. Budesonide is a corticosteroid or steroid (cortisone-like medicine). It works by
26 preventing inflammation (swelling) in the lungs, which makes an asthma attack less severe. It is a
27 dangerous drug as defined in Business and Professions Code section 4022.

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1 11. Clobetasol reduces swelling, redness, itching, or rashes caused by skin conditions,
2 such as eczema and psoriasis. It works by decreasing inflammation of the skin. It belongs to a
3 group of medications called topical steroids. It is a dangerous drug as defined in Business and
4 Professions Code section 4022.

5 12. Doxycycline belongs to the class of medicines known as tetracycline antibiotics. It is
6 used to treat bacterial infections in many different parts of the body. It works by killing bacteria
7 or preventing their growth. However, this medicine will not work for colds, flu, or other virus
8 infections. It is a dangerous drug as defined in Business and Professions Code section 4022.
9 Doxycycline is used to treat a variety of infections caused by certain types of bacteria.
10 Doxycycline is also used to treat or prevent anthrax in people who may have been exposed to
11 anthrax in the air and to treat plague and tuleramia. It is also used to prevent malaria. Doxycycline
12 is also used along with other medications to treat acne and rosacea (a skin disease that causes
13 redness, flushing, and pimples on the face).

14 13. Hydroxychloroquine belongs to a group of medicines known as antimalarials. It
15 works by preventing or treating malaria, a red blood cell infection transmitted by the bite of a
16 mosquito. However, this medicine is not used to treat severe or complicated malaria.
17 Hydroxychloroquine is also used to treat discoid lupus erythematosus (DLE) or systemic lupus
18 erythematosus (SLE or lupus), and to treat acute and chronic rheumatoid arthritis. It is a
19 dangerous drug as defined in Business and Professions Code section 4022.

20 14. Lithium, indicated in the treatment of manic episodes of Bipolar Disorder, is a
21 dangerous drug within the meaning of Business and Professions Code section 4022.

22 15. Nystatin belongs to the group of medicines called antifungals. The dry powder,
23 lozenge (pastille), and liquid forms of this medicine are used to treat fungus infections in the
24 mouth. It is a dangerous drug as defined in Business and Professions Code section 4022.

25 16. Prednisone is a glucocorticoid (hydrocortisone and cortisone), indicated for the
26 treatment of certain endocrine disorders, rheumatic disorders, collagen diseases, dermatologic
27 diseases, allergic states, ophthalmic diseases, respiratory diseases, hematologic disorders,
28 neoplastic diseases, edematous states, gastrointestinal diseases (ulcerative colitis and regional

1 enteritis), and acute exacerbations of multiple sclerosis, tuberculous meningitis, and trichinosis.
2 It is a dangerous drug as defined in section 4022. Psychic derangements may appear when
3 corticosteroids are used, ranging from euphoria, insomnia, mood swings, personality changes, and
4 severe depression to frank psychotic manifestations.

5 17. Sumatriptan, known by the trade name Imitrex, is used to treat migraines. Side
6 effects include tingling/numbness/prickling/heart pain, tiredness, weakness, drowsiness, or
7 dizziness. It is a dangerous drug as defined in section 4022 of the Code.

8 18. Tacrolimus topical is used on the skin to treat moderate to severe atopic dermatitis in
9 patients who have received other medicines that have not worked well. Atopic dermatitis is a skin
10 condition where there is itching, redness, and inflammation, much like an allergic reaction.
11 Tacrolimus helps to suppress these symptoms which are reactions caused by the body's immune
12 system. It is a dangerous drug as defined in section 4022 of the Code.

13 19. Xifaxan, known by the brand name Rifaximin, is used to treat diarrhea caused by the
14 common bacteria known as E. coli. It works by stopping the growth of bacteria. This antibiotic treats
15 only bacterial infections. It will not work for viral infections (such as common cold, flu).

16 20. Zolpidem, known by the trade name Ambien, is a non-benzodiazepine hypnotic of the
17 imidazopyridine class. It is a dangerous drug as defined in Business and Professions Code section
18 4022 and a schedule IV controlled substance as defined by section 11057 of the Health and Safety
19 Code. It is indicated for the short-term treatment of insomnia.

20 21. Zolmitriptan is in a class of medications called selective serotonin receptor agonists.
21 It works by narrowing blood vessels around the brain, stopping pain signals from being sent to the
22 brain, and blocking the release of certain natural substances that cause pain, nausea, and other
23 symptoms of migraine. It is a dangerous drug as defined in section 4022 of the Code.

24 **FACTUAL ALLEGATIONS**

25 22. From 2016 through 2020, Respondent, a psychiatrist, self-prescribed the following
26 medications in non-emergent situations:

- 27 • Sumatriptan 50 mg (#261 tabs total in 2020, #117 tabs total in 2019);
- 28 • Sumatriptan 100mg (#36 tabs in 2019);

- 1 • Clobetasol lotion on January 15, 2020;
- 2 • Xifaxan 550 mg tabs #42 each on September 29, 2020 and October 12, 2020;
- 3 • Tacrolimus ointment on November 25, 2020;
- 4 • Nystatin 500U #180 on April 24, 2020;
- 5 • Budesonide 9 mg #60 on May 9, 2020;
- 6 • Budesonide 3 mg #120 each on June 20, 2020 and on July 16, 2020);
- 7 • Hydroxychloroquine 200 mg #36 on March 16, 2020.

8 23. Respondent also self-prescribed a continuous glucose monitor despite not carrying a
9 diagnosis of prediabetes, diabetes, or metabolic syndrome. On August 12, 2020, Respondent also
10 ordered a chest X-ray for herself, and on August 21, 2021, Respondent ordered a pulmonary
11 function test for herself.

12 24. Respondent prescribed the following medications to Patient 1,¹ a family member, in
13 non-emergent situations:

- 14 • Zolpidem 5 mg., #60 on May 22, 2018;
- 15 • Zolmitriptan on February 10, 2017; March 9, 2017; May 4, 2017; and May 22,
16 2018;
- 17 • Doxycycline on November 29, 2018 and January 9, 2019;
- 18 • Prednisone 10 mg. #60 on June 6, 2020.

19 25. On October 17, 2020, Respondent prescribed for Patient 1 lithium carbonate 300 mg
20 #180 with 3 refills.

21 26. From September 2016 to January 2021, Respondent ordered lab tests for Patient 1.²
22 Respondent's medical records only document the rationale for two tests: September 20, 2016
23 (mold labs) and January 7, 2021 (lab ordering visit). The medical records fail to contain
24 documentation regarding the tests, such as patient history, examination, reason for the tests,
25

26 ¹ To protect the privacy of all patients involved, patient names have not been included in this
27 pleading. Respondent is aware of the identity of all patients referred to herein.

28 ² Respondent ordered lab tests for Patient 1 on the following dates: September 21, 2016;
December 23, 2016; December 27, 2016; December 28, 2016; December 30, 2016, April 8, 2017;
September 24, 2019; June 15, 2020; January 7, 2021.

1 assessment, plan, and follow up of results. The records also fail to note the rationale for the
2 prescribing of medications to Patient 1, any assessment, plan or follow up of results.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Gross Negligence and Repeated Negligent Acts)**

5 27. Paragraphs 22 through 26 are incorporated by referenced as if fully set forth.

6 28. Respondent has subjected Physician's and Surgeon's Certificate No. A 45048 to
7 disciplinary action under sections 2234(b) [gross negligence] and 2234(c) [repeated negligent
8 acts] of the Code, in that Respondent self-prescribed medication and treatments on a non-
9 emergent basis, and outside the scope of Respondent's practice.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts – Patient 1)**

12 29. Paragraphs 22 through 26 are incorporated by referenced as if fully set forth.

13 30. Respondent has subjected Physician's and Surgeon's Certificate No. A 45048 to
14 disciplinary action under sections 2234(b) [gross negligence] and 2234(c) [repeated negligent
15 acts] of the Code, in that Respondent prescribed medications and ordered lab tests for a family
16 member on a non-emergent basis.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct: Repeated Negligent Acts/Failure to Keep
Adequate and Accurate Records)**

19 31. Paragraphs 22 through 26 are incorporated by referenced as if fully set forth.

20 32. Respondent has subjected Physician's and Surgeon's Certificate No. A 45048 to
21 disciplinary action under sections 2234(c) [repeated negligent acts] and 2266 [failure to keep
22 adequate and accurate records] of the Code, in that Respondent prescribed medications and
23 ordered tests for Patient 1 without documenting these actions or the rationale for them.

24 **PRAYER**

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

27 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 45048,
28 issued to Kathleen M. Toups, M.D.;

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2. Revoking, suspending or denying approval of Kathleen M. Toups, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Kathleen M. Toups, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 28 2023



REJI VARGHSE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant