

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 NICOLE NOONAN-MILLER
Deputy Attorney General
4 State Bar No. 276951
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9041
7 Facsimile: (619) 645-2061
8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:	Case No. 800-2021-075660
14 David Hobart Payne, M.D. 15 540 N Golden Circle Dr., Ste 107 Santa Ana, CA 92705-3914	A C C U S A T I O N
16 Physician's and Surgeon's Certificate 17 No. G 62826,	
18 Respondent.	

19 **PARTIES**

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

23 2. On or about May 9, 1988, the Medical Board issued Physician's and Surgeon's
24 Certificate No. G 62826 to David Hobart Payne, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and expired on July 31, 2023.

27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. 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:

(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.

...

(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.

...

8. Section 2236 of the Code states, in pertinent part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

...

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

9. Section 118 of the Code states:

(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding

1 against the applicant for the denial of the license upon any ground provided by law or
2 to enter an order denying the license upon any such ground.

3 (b) The suspension, expiration, or forfeiture by operation of law of a license
4 issued by a board in the department, or its suspension, forfeiture, or cancellation by
5 order of the board or by order of a court of law, or its surrender without the written
6 consent of the board, shall not, during any period in which it may be renewed,
restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the licensee on any such ground.

7 (c) As used in this section, "board" includes an individual who is authorized by
8 any provision of this code to issue, suspend, or revoke a license, and "license"
includes "certificate," "registration," and "permit."

9 10. California Code of Regulations, title 16, section 1360, states:

10 For the purposes of denial, suspension or revocation of a license..., a crime or
11 act shall be considered to be substantially related to the qualifications, functions or
12 duties of a person holding a license, certificate or permit under the Medical Practice
13 Act if to a substantial degree it evidences present or potential unfitness of a person
14 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.

15 COST RECOVERY

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

22 FIRST CAUSE FOR DISCIPLINE

23 (Conviction of a Crime Related to the Qualifications, Functions or Duties of a Physician and Surgeon)

24 12. Respondent has subjected his Physician's and Surgeon's Certificate No. G 62826 to
25 disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, and
26 section 1360 of Title 16 of the California Code of Regulations, in that Respondent has been
27 convicted of a crime substantially related to the qualifications, functions, or duties of a physician
28 and surgeon. The circumstances are as follows:

1 13. On or about June 6, 2017, Respondent was charged by Grand Jury Indictment in
2 United States District Court for the Central District of California case number SA CR No. 17-053.
3 The Indictment charged Respondent with one count of Conspiracy (18 U.S.C. § 371), one count
4 of Wire Fraud Involving Deprivation of Honest Services (18 U.S.C. §§ 1343, 1346), and one
5 count of Aiding and Abetting in the Use of an Interstate Facility in Aid of Unlawful Activity (18
6 U.S.C. § 1952(a)(3); 18 U.S.C. § 2). These charges were based upon Respondent's participation
7 in a healthcare kickback scheme and receipt of kickbacks in exchange for referrals of patients
8 needing spinal surgeries and other procedures.

9 14. On or about April 25, 2018, a First Superseding Indictment was filed charging
10 Respondent with one count of Conspiracy (18 U.S.C. § 371), two counts of Wire Fraud Involving
11 Deprivation of Honest Services (18 U.S.C. §§ 1343, 1346) occurring on June 8, 2012 and April
12 29, 2013, and two counts of Aiding and Abetting in the Use of an Interstate Facility in Aid of
13 Unlawful Activity (18 U.S.C. § 1952(a); 18 U.S.C. § 2) occurring on the same two dates as
14 above.

15 15. On or about March 3, 2023, a jury found Respondent guilty of four felony violations:
16 Conspiracy (18 U.S.C. § 371) as charged in Count One, Wire Fraud Involving Deprivation of
17 Honest Services (18 U.S.C. § 1343, 1346) as charged in Counts Two and Three, and Aiding and
18 Abetting in the Use of an Interstate Facility in Aid of Unlawful Activity (18 U.S.C. § 1952(a)) as
19 charged in Count Four of the Indictment. Count Five was dismissed by the Court prior to the jury
20 trial, on motion of the United States Attorney.

21 16. On or about July 14, 2023, Respondent was sentenced to 33 months in prison.
22 Additionally, following his term of imprisonment, Respondent was ordered to serve three years
23 on supervised release with designated terms and conditions. The Court further entered a money
24 judgment of forfeiture against Respondent in the amount of \$316,597.44, as well as fines totaling
25 \$20,000.

26 17. At the time of sentencing, Respondent was ordered to remand to the Federal Bureau
27 of Prisons before noon on September 15, 2023. On or about December 29, 2023, following
28 subsequent stipulation and order, Respondent's surrender date was continued to January 3, 2024.

1 18. Based on the First Superseding Indictment, upon which the jury verdicts were based,
2 the underlying facts of the offenses are as follows:

3 19. Beginning on a date unknown but at least as early as in or about May 2008, and
4 continuing through at least in or around April 2013, Respondent, together with others, knowingly
5 combined, conspired, and agreed to accept kickbacks for surgeries referred and/or performed.¹

6 20. During the time of the crimes alleged, Respondent was an orthopedic surgeon who
7 owned and operated Industrial Orthopedics Spine and Sports Medicine (Industrial Orthopedics), a
8 medical clinic located in Sana Ana, California, specializing in orthopedic spinal surgery and
9 orthopedic sports medicine.

10 21. Respondent's primary co-conspirator was the owner and/or operator of Pacific
11 Hospital in Long Beach and was further in control of International Implants LLC (I2), a company
12 that purchased implantable medical devices for use in spinal surgeries from original
13 manufacturers and sold them to hospitals, particularly Pacific Hospital.

14 22. Respondent's co-conspirators offered to pay kickbacks to Respondent and others in
15 return for spinal surgeries and other procedures performed at Pacific Hospital. A greater
16 kickback was offered if I2 equipment was used in the surgery. Typically, Respondent was
17 offered a kickback of approximately \$15,000 per lumbar fusion surgery and \$10,000 per cervical
18 fusion surgery provided that equipment distributed through I2 was used in the surgery.

19 23. Influenced by the promise of kickbacks, Respondent referred multiple patients
20 insured through health care benefit programs to Pacific Hospital for surgeries, and, at times,
21 performed the surgeries himself.

22 24. The patients were not informed that Respondent had been offered and received
23 kickbacks to induce him to refer the surgeries and other medical services to Pacific Hospital, thus
24 depriving the patients of their right to honest services.

25 25. The kickbacks were paid to Respondent using the mail and other facilities in
26 interstate commerce.

27 ¹ Any facts alleged as having occurred more than seven years prior to the filing date of
28 this Accusation are pleaded for informational purposes only and are not alleged as a basis for
discipline.

1 32. Patient A was referred to Respondent through an acquaintance to seek treatment for
2 COVID-19.

3 33. On or about February 8, 2021, Patient A contacted Respondent over the telephone
4 and had a brief discussion about treatment.

5 34. On or about February 9, 2021, Respondent and Patient A communicated via text
6 message, and Patient A described her symptoms to Respondent, told him she is asthmatic, and
7 inquired about medications.

8 35. On or about February 9, 2021, Respondent and Patient A had a short consultation
9 over the telephone, discussing Patient A's illness and Respondent's proposed care plan.

10 36. On or about February 9, 2021, Patient A texted Respondent to let him know that she
11 had questions and would follow up via email. On the same date, Respondent replied to Patient
12 A's email, answering Patient A's questions and advising Patient A of how Respondent believed
13 the medications prescribed would treat her COVID.

14 37. On or about February 9, 2021, Respondent emailed to Patient A documents including
15 a "COVID Care Contract," which included a questionnaire related to Patient A's symptoms,
16 living situation, medical history, and personal identifying information.

17 38. Respondent used the following unsecured email address to communicate with Patient
18 A: C19CareRX@gmail.com. Patient A's email was similarly an unsecured gmail address.

19 39. On or about February 9, 2021, Respondent followed up via text message to see if
20 Patient A had received the paperwork he emailed her.

21 40. On or about February 10, 2021, Patient A filled out and signed the COVID contract
22 and Teleconference/Teletext Questionnaire. Patient A returned the contract and questionnaire via
23 email.

24 41. In the questionnaire, Patient A noted that she had recently tested positive for COVID,
25 and reported she was experiencing brain fog, shortness of breath, diarrhea, fatigue with activity,
26 tiredness, loss of taste and smell, weakness, headaches, cough, and back pain. Patient A stated
27 that she lived in a house with another person who had COVID as well. Patient A also reported
28 having a history of asthma and degenerative disc disease.

1 42. On or about February 10, 2021, Patient A emailed to Respondent medical records
2 including her recent X-Ray findings from January 28, 2021 and her COVID test results from
3 January 22, 2021.

4 43. On or about February 10, 2021, Respondent wrote prescriptions for Ivermectin³,
5 Doxycycline Hyclate⁴, and Dexamethasone⁵ for Patient A.

6 44. On or about February 10, 2021, Respondent emailed Patient A her unique assessment
7 and plan, which included her personal health information, symptoms, and medical history, as well
8 as a plan including the medications prescribed.

9 45. On or about February 10, 2021, Respondent continued to communicate via text
10 message with Patient A, advising Patient A on how and when to take the prescribed medications.

11 46. On or about February 11, 2021, Patient A made an electronic cash payment of \$300
12 to Respondent via Zelle.

13 47. On or about February 11, 2021, Respondent emailed Patient A encouraging her to
14 stick to and follow the treatment plan he gave her.

15 48. On or about February 13, 2021, Patient A notified Respondent that she had developed
16 a rash around her mouth, chin, and neck. Respondent responded with inquiries about Patient A's
17 symptoms and response to the medications. Respondent advised Patient A, via text message, that
18 the rash may be a manifestation of Ivermectin killing COVID on her skin. Respondent further
19 discussed the rash with Patient A via email.

20 ///

21 ³ Ivermectin is an anti-parasite medication used to treat parasitic diseases. The National
22 Institutes of Health (NIH) recommends against the use of Ivermectin for the treatment of COVID
except in clinical trials.

23 ⁴ Doxycycline is a tetracycline antibiotic that inhibits bacterial growth and is thought to
24 have anti-inflammatory effects. Doxycycline is used to treat many different bacterial infections
25 including acne, urinary and respiratory tract infections, eye infections, gum disease, gonorrhea,
chlamydia, and syphilis. It can also be used to prevent malaria and treat infections caused by
mites, ticks, or lice.

26 ⁵ Dexamethasone is a corticosteroid that prevents the release of substances in the body
27 that cause inflammation. Dexamethasone is used to treat many different inflammatory conditions
28 such as allergic disorders and skin conditions. For non-hospitalized adults with COVID the NIH
recommends against the use of systemic steroids.


1 Practice Act, as more particularly alleged in paragraphs 12 through 51, above, which are hereby
2 incorporated by reference and realleged as if fully set forth herein.

3 **PRAYER**

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

- 6 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 62826, issued
7 to Respondent David Hobart Payne, M.D.;
- 8 2. Revoking, suspending or denying approval of Respondent David Hobart Payne,
9 M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 10 3. Ordering David Hobart Payne, M.D., to pay the Board the costs of the investigation
11 and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
- 12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: **FEB 23 2024**



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

14
15 SD2023802150
16 84388262.docx

17
18
19
20
21
22
23
24
25
26
27
28