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

In the Matter of the Accusation Against:	)	
Stephen Douglas Smith, DPM	)	**Case No. 500-2016-000346**
Doctor of Podiatric Medicine License No. E2588	)	
Respondent	)	

DECISION

The attached Stipulated Surrender and Disciplinary Order is hereby adopted as the Decision and Order of the Board of Podiatric Medicine, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 25, 2019.

IT IS SO ORDERED April 18, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____
Brian Naslund
Executive Officer

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
JASON J. AHN
Deputy Attorney General
State Bar No. 253172
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9433
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **STEPHEN DOUGLAS SMITH, DPM** **16142 Santa Barbara Lane** **Huntington Beach, CA 92649** **Podiatric Medicine Certificate No. 2588** Respondent.	Case No. 500-2016-000346 OAH No. 2018090012 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. Brian Naslund (Complainant) is the Executive Officer of the Board of Podiatric Medicine (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Jason J. Ahn, Deputy Attorney General.

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2. Stephen Douglas Smith, DPM (Respondent) is represented in this proceeding by attorney Constance Endelicato, Esq., whose address is: 10960 Wilshire Blvd., 18th Floor Los Angeles, CA 90024-3804.

3. On or about May 2, 1980, the Board issued Podiatric Medicine Certificate No. 2588 to Respondent. The Podiatric Medicine Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 500-2016-000346 and will expire on May 31, 2019, unless renewed.

JURISDICTION

4. On August 7, 2018, Accusation No. 500-2016-000346 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 7, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 500-2016-000346 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 500-2016-000346. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Order.

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

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

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CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 500-2016-000346 and that he has thereby subjected his Podiatric Medicine Certificate No. 2588 to disciplinary action.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Podiatric Medicine Certificate without further process.

10. Respondent further agrees that if he ever petitions for reinstatement of his Podiatric Medicine Certificate No. 2588, or if an accusation is filed against him before the California Board of Podiatric Medicine, all of the charges and allegations contained in Accusation No. 500-2016-000346 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the state of California or elsewhere.

CONTINGENCY

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

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ADDITIONAL PROVISIONS

12. This Stipulated Surrender and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

13. The parties agree that copies of this Stipulated Surrender and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

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

ORDER

IT IS HEREBY ORDERED that Podiatric Medicine Certificate No. 2588, issued to Respondent Stephen Douglas Smith, DPM, is surrendered and accepted by the Board.

1. The surrender of Respondent's Podiatric Medicine Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Podiatrist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 500-2016-000346 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

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5. 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 agency in the State of California, all of the charges and allegations contained in Accusation, No. 500-2016-000346 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 licensure.

6. Respondent shall pay the Board the amount of $14,459.00 prior to issuance of a new or reinstated license, which reflects all unpaid costs of probation monitoring, as well as all unpaid cost recovery amounts, incurred in Case No. 500-2016-000346, and all costs of investigation and enforcement incurred in Accusation No. 500-2016-000361.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Constance Endelicato, Esq. I understand the stipulation and the effect it will have on my Podiatric Medicine Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and fully agree to be bound by the Decision and Order of the Board of Podiatric Medicine.

DATED: April 10th, 2019

STEPHEN DOUGLAS SMITH, DPM
Respondent

I have read and fully discussed with Respondent Stephen Douglas Smith, DPM the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 4/10/19

CONSTANCE ENDELICATO, ESQ.
Attorney for Respondent

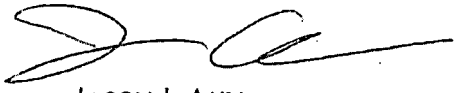
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Podiatric Medicine of the Department of Consumer Affairs.

Dated: April 10, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 500-2016-000346

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 7 2018
BY R. Fitzwater ANALYST

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
JASON J. AHN
Deputy Attorney General
State Bar No. 253172
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9433
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **STEPHEN DOUGLAS SMITH, DPM** **16142 Santa Barbara Lane** **Huntington Beach, CA 92649** **Podiatric License No. E2588** Respondent.	Case No. 500-2016-000346 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about May 2, 1980, the Board of Podiatric Medicine issued Podiatric License Number E2588 to Stephen Douglas Smith, DPM (Respondent). The Podiatric License will expire on May 31, 2019, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions 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.

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.

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5. Section 2497 of the Code states:

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

"(b) The board may hear all matters, including but not limited to, any contested case or may assign any such matters to an administrative law judge. The proceedings shall be held in accordance with Section 2230. If a contested case is heard by the 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."

6. 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.

"..."

7. 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."

8. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

COST RECOVERY

9. 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.

"(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.

"(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.

"(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.

"(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 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent has subjected his Podiatric License No. E2588 to disciplinary action under sections 2222 and 2497, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patient A[1], as more particularly alleged hereinafter:

Patient A

11. Respondent began treating Patient A in or around October 2010 for his foot pain.

12. On multiple visits between October 2010 and April 2013, Respondent provided care and treatment to Patient R.B. for his foot pain.

13. On or about February 21, 2013, Patient A complained of a bunion and pain over the top of his right foot from enlargement of the bone/ganglion[2] and requested surgical repair of his right foot.

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[1] A letter is being used in lieu of actual patient name or initials in order to preserve patient privacy.

[2] A ganglion is an abnormal benign swelling on a tendon sheath.

14. On or about April 24, 2013, Patient A presented to Respondent with a boney, osseous[3] deformity of the right great toe, symptomatic bunion joint and increased intermetatarsal angle over 12 degrees. Patient A had an active lifestyle at that point. Instead of an osteotomy[4] or fusion, Respondent performed a soft tissue procedure on Patient A, by resecting[5] the medial bunion enlargement and then using two loops of absorbable suture to reduce the intermetatarsal angle.[6] Respondent then performed a second procedure, an interpositional arthroplasty[7] of the second metatarsal cuneiform joint with a soft tissue graft, which was not indicated and does not adequately address Patient A's condition because resection of bone dorsally or an arthrodesis[8] of the joint is the acceptable procedure for a degenerative joint in the midfoot and an eroded painful joint in the midfoot requires fusion of the joint with or without a bone graft, which was not done.

15. After performing an interpositional arthroplasty of the second metatarsal cuneiform joint with a soft tissue graft, Respondent billed this procedure under Code 28730, "an arthrodesis of the metatarsal/tarsal joint multiple or transverse." Respondent did not perform an arthrodesis procedure, but only resected the bone from the joint with a soft tissue interposition. In addition, whereas Code 28730 indicates "multiple" joints, Respondent only operated on "one" joint.

16. After April 24, 2013, Respondent continued to provide care and treatment to Patient A until July 2013. Respondent's medical records of Patient A, including, but not limited to, records from 2012 to July 2013, were brief, hand-written, and difficult to decipher due to numerous abbreviations which are not universally acceptable (medical records). In addition, the medical records do not clearly describe Patient A's complaints or Respondent's findings on examination.

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[3] Osseous means consisting of or turned into bone; ossified.

[4] Osteotomy refers to the surgical cutting of a bone or removal of a piece of bone.

[5] Resect mean to cute out (tissue or part of an organ).

[6] Intermetatarsal angle refers to the angel measured between the 1st and 2nd metatarsal shaft on an axial view of the foot. Metatarsals are long bones in the forefoot that lead up to the toes.

[7] Arthroplasty refers to the surgical reconstruction or replacement of a joint.

[8] Arthrodesis refers to surgical immobilization of a joint by fusion of the adjacent bones.

17. Respondent committed gross negligence in his care and treatment of Patient A, which included, but were not limited to:

(a) Instead of an osteotomy or fusion, Respondent performed a soft tissue procedure on Patient A for the boney bunion enlargement; and

(b) Respondent performed an interpositional arthroplasty of the second metatarsal cuneiform joint with a soft tissue graft, which was not indicated and does not adequately address Patient A's condition.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

Respondent has subjected his Podiatric License No. E2588 to disciplinary action under sections 2222 and 2497, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged hereinafter:

18. Paragraph 10 through 17 above, are incorporated by reference and realleged as if fully set forth herein.

19. Respondent committed repeated negligent acts which included, but were not limited to, the following:

(a) Instead of an osteotomy or fusion, Respondent performed a soft tissue procedure on Patient A for the boney bunion enlargement;

(b) Respondent performed an interpositional arthroplasty of the second metatarsal cuneiform joint with a soft tissue graft, which was not indicated and does not adequately address Patient A's condition;

(c) Respondent's billing for the interpositional arthroplasty of the second metatarsal cuneiform joint with a soft tissue graft was dishonest and/or fraudulent; and

(d) Respondent failed to maintain adequate and accurate records of Patient A.

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THIRD CAUSE FOR DISCIPLINE

(Dishonest or Corrupt Act)

20. Respondent has subjected his Podiatric License No. E2588 to disciplinary action under sections 2222 and 2497, as defined by section 2234, subdivision (e), of the Code, in that he committed a dishonest or corrupt act during his care and treatment of Patient A, as more particularly alleged hereinafter.

21. Paragraphs 10 through 19, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

Respondent has subjected his Podiatric License No. E2588 to disciplinary action under sections 2222 and 2497, as defined by section 2266, of the Code, in that in that he failed to maintain adequate and accurate records relating to his care and treatment of Patient A, as more particularly alleged hereinafter.

22. Paragraphs 10 through 21, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

Respondent has subjected his Podiatric License No. E2588 to disciplinary action under sections 2222 and 2497, as defined by section 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter.

23. Paragraphs 10 through 22, above, which are hereby incorporated by reference as if fully set forth herein.

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DISCIPLINARY CONSIDERATIONS

23. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that in a prior disciplinary action entitled In the Matter of the Accusation Against Stephen Douglas Smith, DPM before the Board of Podiatric Medicine, in Case Number 1B-1999-102110, effective on or about August 23, 2004, Respondent's Podiatric License Number E2588 was revoked, with revocation stayed for five years of probation with various terms and conditions for gross negligence, negligence, incompetence, excessive treatments, fraud, dishonesty, and unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Podiatric License Number E2588, issued to Stephen Douglas Smith, D.P.M.;

2. Ordering Stephen Douglas Smith, D.P.M. to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5; and

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

DATED: August 7, 2018

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