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

In the Matter of the Accusation Against:

Case No. 500-2015-000211

MICHAEL ALAN STEIN, D.P.M.
1300 Bancroft Ave, #103
San Leandro, CA 94577

A C C U S A T I O N

Podiatrist License No. E 2905

Respondent.

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 December 10, 1981, the Board of Podiatric Medicine issued Podiatrist License Number E 2905 to MICHAEL ALAN STEIN, D.P.M. (Respondent). The Podiatrist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

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.

1 4. Section 2472 of the Code states, in pertinent part:

2 “(a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric
3 medicine.

4 “(b) As used in this chapter, "podiatric medicine" means the diagnosis, medical, surgical,
5 mechanical, manipulative, and electrical treatment of the human foot, including the ankle and
6 tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the
7 leg governing the functions of the foot.

8 “”

9 5. Section 2497, subdivision (a), of the Code states that “[t]he board may order the
10 denial of an application for, or the suspension of, or the revocation of, or the imposition of
11 probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set
12 forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.”

13 6. Section 2222 of the Code provides, in pertinent part, that “[a]ny acts of
14 unprofessional conduct or other violations proscribed by [the Medical Practice Act] are applicable
15 to licensed doctors of podiatric medicine” and that the Board may “order the revocation,
16 suspension, or other restriction of, or the modification of that penalty, and the reinstatement of
17 any certificate of a doctor of podiatric medicine within its authority as granted by [the Medical
18 Practice Act] and in conjunction with the administrative hearing procedures established pursuant
19 to Sections 11371, 11372, 11373, and 11529 of the Government Code.”

20 7. Section 2234 of the Code, a part of Article 12 of the Medical Practice Act, states, in
21 relevant part:

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

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

27 “(b) Gross negligence.
28

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

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

6 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
7 constitutes the negligent act described in paragraph (1), including, but not limited to, a
8 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
9 applicable standard of care, each departure constitutes a separate and distinct breach of the
10 standard of care.”

11 “”

12 8. Section 2263 of the Code, a part of Article 12 of the Medical Practice Act, provides
13 that “[t]he willful, unauthorized violation of professional confidence constitutes unprofessional
14 conduct.”

15 9. Section 2497.5 of the Code states:

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

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

24 “(c) When the payment directed in the board’s order for payment of costs is not made
25 by the licensee, the board may enforce the order for payment by bringing an action in any
26 appropriate court. This right of enforcement shall be in addition to any other rights the board may
27 have as to any licensee directed to pay costs.

“(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 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.”

FACTS

10. At all times relevant to this matter, Respondent was licensed and practicing podiatric medicine in California.

11. Respondent has treated the fingernails of a number of his patients by laser for onychomycosis of the nails. After diagnosing the condition, he photographed the patients' nails and sent the photos, labeled with the patients' names, to a medical doctor to confirm his diagnosis before providing treatment. The medical doctor did not oversee or supervise the treatment and only very rarely saw the patients personally. Respondent paid the medical doctor a monthly stipend for her services. Respondent regularly sent these photographs to the medical doctor from his cell phone without encryption and without patient consent to having the photos sent without encryption.

12. For a period of at least two to five years, Respondent secretly video recorded female office staff, patients, and members of the general public without their knowledge or consent for his private viewing. The videos concentrated on the chest and buttock areas of clothed women.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence, Repeated Negligent Acts, Violation of Professional Confidence)**

3 13. Respondent is guilty of unprofessional conduct and subject to disciplinary action
4 under section 2234, subdivision (b) (gross negligence) and (c) (repeated negligent acts), and 2263
5 (violation of professional confidence) of the Code in that, as described above, he secretly took
6 videos of patients and various body parts of patients with his cell phone without their consent for
7 his private viewing.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Gross Negligence, Repeated Negligent Acts)**

10 14. Respondent is guilty of unprofessional conduct and subject to disciplinary action
11 under section 2234, subdivision (b) (gross negligence) and (c) (repeated negligent acts), of the
12 Code in that, as described above, he secretly took videos of his female staff and of female
13 members of the general public without their knowledge and consent for his private viewing.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Repeated Negligent Acts)**

16 15. Respondent is guilty of unprofessional conduct and subject to disciplinary action
17 under section 2234, subdivision (c) (repeated negligent acts), of the Code in that, as described
18 above, he transmitted unencrypted patient information and photos to his retained medical doctor
19 using his cell phone and e-mail without patient consent to transmit the information without
20 encryption.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Repeated Negligent Acts)**

23 16. Respondent is guilty of unprofessional conduct and subject to disciplinary action
24 under section 2234, subdivision (c) (repeated negligent acts), of the Code in that, as described
25 above, he provided laser treatments for onychomycosis on patients' fingernails.

26 **PRAYER**


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

1 1. Revoking or suspending Podiatrist License Number E 2905, issued to MICHAEL
2 ALAN STEIN, D.P.M.;

3 2. Ordering Michael A. Stein, DPM to pay the Board of Podiatric Medicine the
4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
5 Professions Code section 2497.5, and, if placed on probation, to pay the Board of Podiatric
6 Medicine the costs of probation monitoring; and,

7 3. Taking such other and further action as deemed necessary and proper.
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11 DATED: February 8, 2017


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

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