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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. 500-2016-000406

Silvia Jessica Arroyo, D.P.M.
1011 Baldwin Park Blvd.,
Baldwin Park, CA 91706

ACCUSATION

Podiatrist License No. E 4718,

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 (Board).

2. On or about March 29, 2007, the Board of Podiatric Medicine issued Podiatrist License Number E 4718 to Silvia Jessica Arroyo, 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 June 30, 2018, 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 Code Section 2220 et seq. of the Medical Practice Act as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by the Medical Practice Act 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 Code 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 the Medical Practice Act.

5. Section 2228 of the Code states:

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

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

“(b) Requiring the licensee to submit to a complete diagnostic examination by one or more

1 physicians and surgeons appointed by the board. If an examination is ordered, the board shall
2 receive and consider any other report of a complete diagnostic examination given by one or more
3 physicians and surgeons of the licensee's choice.

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

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

9 6. Section 2229 of the Code states:

10 “(a) Protection of the public shall be the highest priority for the Division of Medical
11 Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical
12 Quality Hearing Panel in exercising their disciplinary authority.

13 “(b) In exercising his or her disciplinary authority an administrative law judge of the
14 Medical Quality Hearing Panel, the division, or the California Board of Podiatric Medicine, shall,
15 wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or
16 where, due to a lack of continuing education or other reasons, restriction on scope of practice is
17 indicated, to order restrictions as are indicated by the evidence.

18 “(c) It is the intent of the Legislature that the division, the California Board of Podiatric
19 Medicine, and the enforcement program shall seek out those licensees who have demonstrated
20 deficiencies in competency and then take those actions as are indicated, with priority given to
21 those measures, including further education, restrictions from practice, or other means, that will
22 remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall
23 be paramount.”

24 7. Section 2234 of the Code, states:

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

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

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 “(f) Any action or conduct which would have warranted the denial of a certificate.

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 **FACTS**

26 **Patient 1:¹**

27 8. Respondent treated Patient 1 from December 2013 through September 2014 for a

28 ¹ The patient is identified numerically to protect his privacy.

1 symptomatic lesion and an injury to the fifth toe of his left foot with bleeding to the fifth toe. On
2 each occasion Respondent treated the problem with debridement and a topical application of
3 silver nitrate.

4 9. Respondent's notes indicate that the lesion was present and did not resolve. The
5 lesion began to progress underneath the fifth toe nail resulting in bleeding. The notes include
6 comments of performing a possible biopsy and removal but no definitive biopsy was ever
7 performed.

8 10. In September 2017, Patient 1 requested a second opinion and was seen by another
9 podiatrist, Dr. D.L., on September 8, 2017, who immediately recommended a biopsy, which was
10 performed. The biopsy revealed malignant melanoma.

11 11. Patient 1 was also subsequently treated for a mass in his left groin which revealed
12 metastasis to several lymph nodes which required further surgical dissection. The patient has
13 since been treated with chemotherapy and given a life expectancy of 3 years.

14 12. Respondent failed to conduct appropriate procedures to identify the lesion which did
15 not heal. She did not entertain the possibility of cancer even though the lesion progressed to a
16 location under the nail bed with bleeding, which is a definitive sign for suspicion of cancer.

17 13. Respondent did not use dermoscopy as part of the lesion assessment process.

18 14. Respondent did not note that the most remarkable and diagnostic sign of suspicion of
19 melanoma is subungual bleeding.

20 15. Respondent did not perform a biopsy to formulate a reasonable differential diagnosis
21 despite Patient 1 having a persistent symptom with no improvement following the repeated course
22 of multiple applications of silver nitrate and debridement.

23 16. Respondent failed to evaluate Patient 1's pigmented lesions of the skin despite being
24 unable to explain the presence of the lesion over a long duration of months, and seeing that it was
25 recalcitrant to therapy, which are indications calling for a skin biopsy.

26 17. Respondent's notes mention performing a biopsy but the procedure was never
27 performed despite the fact that the small toe on the foot lends itself very well to local anesthesia
28 and a quick rapid biopsy can be performed in minutes.

1 **CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Gross Negligence)**

3 18. Respondent Silvia Jessica Arroyo, D.P.M. is subject to disciplinary action under
4 section 2234 subdivision (b) in that she engaged in actions constituting gross negligence in the
5 care and treatment of Patient 1. The circumstances are as follows:

6 19. Paragraphs 8 through 17 are incorporated by reference as though fully set forth
7 herein.

8 20. Respondent's failure to perform a skin biopsy early on in the course of treatment after
9 60 days of no response to topical silver nitrate constitutes gross negligence.

10 **PRAYER**

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


13 1. Revoking or suspending Podiatrist Number E 4718, issued to Silvia Jessica Arroyo,
14 D.P.M.;

15 2. Ordering Silvia Jessica Arroyo, D.P.M. to pay the Board of Podiatric Medicine the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 2497.5;

18 3. Ordering Silvia Jessica Arroyo, D.P.M., if placed on probation, to pay the Board the
19 costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

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22 DATED: April 11, 2018


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

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