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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. 500-2016-000346

**STEPHEN DOUGLAS SMITH, DPM**  
**16142 Santa Barbara Lane**  
**Huntington Beach, CA 92649**  
**Podiatric License No. E2588**

**ACCUSATION**

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 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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1           5.     Section 2497 of the Code states:

2                 “(a) The board may order the denial of an application for, or the suspension of, or the  
3                 revocation of, or the imposition of probationary conditions upon, a certificate to practice  
4                 podiatric medicine for any of the causes set forth in Article 12 (commencing with Section  
5                 2220) in accordance with Section 2222.

6                 “(b) The board may hear all matters, including but not limited to, any contested case  
7                 or may assign any such matters to an administrative law judge. The proceedings shall be  
8                 held in accordance with Section 2230. If a contested case is heard by the board itself, the  
9                 administrative law judge who presided at the hearing shall be present during the board’s  
10                consideration of the case and shall assist and advise the board.”

11           6.     Section 2234 of the Code states in pertinent part:

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

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

17                   “(b) Gross negligence.

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

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

25                   “(2) When the standard of care requires a change in the diagnosis, act, or  
26                   omission that constitutes the negligent act described in paragraph (1), including,  
27                   but not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
28                   licensee’s conduct departs from the applicable standard of care, each departure

1 constitutes a separate and distinct breach of the standard of care.

2 "...

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

5 "..."

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

9 8. Unprofessional conduct under Business and Professions Code section 2234 is conduct  
10 which breaches the rules or ethical code of the medical profession, or conduct which is  
11 unbecoming a member in good standing of the medical profession, and which demonstrates an  
12 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,  
13 575.)

#### 14 COST RECOVERY

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  
18 found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual  
19 and reasonable 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  
22 making its own decision finds grounds for increasing the costs to be assessed, not to exceed  
23 the actual and 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  
27 board may have as to any licensee directed to pay costs.

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1 “(d) In any judicial action for the recovery of costs, proof of the board’s decision shall  
2 be conclusive proof of the validity of the order of payment and the terms for payment.

3 “(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the  
4 license of any licensee who has failed to pay all of the costs ordered under this section.

5 “(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally  
6 renew or reinstate for a maximum of one year the license of any licensee who demonstrates  
7 financial hardship and who enters into a formal agreement with the board to reimburse the  
8 board within one year period for those unpaid costs.

9 “(f) All costs recovered under this section shall be deposited in the Board of Podiatric  
10 Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually  
11 recovered or the previous fiscal year, as the board may direct.”

## 12 **FIRST CAUSE FOR DISCIPLINE**

### 13 **(Gross Negligence)**

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

#### 18 **Patient A**

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

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

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

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26 <sup>1</sup> A letter is being used in lieu of actual patient name or initials in order to preserve patient  
privacy.

27 <sup>2</sup> A ganglion is an abnormal benign swelling on a tendon sheath.  
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14. On or about April 24, 2013, Patient A presented to Respondent with a boney, osseous<sup>3</sup> 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<sup>4</sup> or fusion, Respondent performed a soft tissue procedure on Patient A, by resecting<sup>5</sup> the medial bunion enlargement and then using two loops of absorbable suture to reduce the intermetatarsal angle.<sup>6</sup> Respondent then performed a second procedure, an interpositional arthroplasty<sup>7</sup> 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<sup>8</sup> 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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<sup>3</sup> Osseous means consisting of or turned into bone; ossified.

<sup>4</sup> Osteotomy refers to the surgical cutting of a bone or removal of a piece of bone.

<sup>5</sup> Resect mean to cute out (tissue or part of an organ).

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

<sup>7</sup> Arthroplasty refers to the surgical reconstruction or replacement of a joint.

<sup>8</sup> Arthrodesis refers to surgical immobilization of a joint by fusion of the adjacent bones.

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

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

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

### 8 **SECOND CAUSE FOR DISCIPLINE**

#### 9 **(Repeated Negligent Acts)**

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

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

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

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

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

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

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

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dishonest or Corrupt Act)**

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

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

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Adequate and Accurate Records)**

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

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

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(General Unprofessional Conduct)**

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

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

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