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 7

8 **BEFORE THE**  
**PODIATRIC MEDICAL BOARD OF CALIFORNIA**  
 9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:  
 11 **MICHAEL M. FANOUS, D.P.M.**  
 12 **2834 Hamner Ave. #113**  
 13 **Norco, CA 92860**  
 14 **Podiatric License No. E 3544,**  
 15 Respondent.

Case No. 500-2019-000938  
 OAH No. 2022080894

**STIPULATED SETTLEMENT AND  
 DISCIPLINARY ORDER**

16  
 17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
 18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Brian Naslund (Complainant) is the Executive Officer of the Podiatric Medical Board  
 21 of California (Board). He brought this action solely in his official capacity and is represented in  
 22 this matter by Rob Bonta, Attorney General of the State of California, by Marsha E. Barr-  
 23 Fernandez, Deputy Attorney General.

24 2. Respondent Michael M. Fanous, D.P.M. (Respondent) is represented in this  
 25 proceeding by attorney C. Keith Greer, whose address is: 16855 West Bernardo Drive, Suite 255,  
 26 San Diego, California 92127.

27 3. On or about August 15, 1988, the Board issued Podiatric License No. E 3544 to  
 28 Michael M. Fanous, D.P.M. (Respondent). The Podiatric License was in full force and effect at

1 all times relevant to the charges brought in Accusation No. 500-2019-000938, and will expire on  
2 June 30, 2024, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 500-2019-000938 was filed before the Board, and is currently  
5 pending against Respondent. The Accusation and all other statutorily required documents were  
6 properly served on Respondent on July 27, 2022. Respondent timely filed his Notice of Defense  
7 contesting the Accusation.

8 5. A copy of Accusation No. 500-2019-000938 is attached as Exhibit A and  
9 incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 500-2019-000938. Respondent has also carefully read,  
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
14 Disciplinary Order.

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

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

23 **CULPABILITY**

24 9. Respondent understands that the charges and allegations in Accusation No. 500-2019-  
25 000938, if proven at a hearing, constitute cause for imposing discipline upon his Podiatric  
26 License.

27 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation and that those charges constitute cause for discipline.  
2 Respondent hereby gives up his right to contest that cause for discipline exists based on those  
3 charges.

4 11. Respondent agrees that if he ever petitions for early termination or modification of  
5 probation, or if the Board ever petitions for revocation of probation, all of the charges and  
6 allegations contained in Accusation No. 500-2019-000938 shall be deemed true, correct and fully  
7 admitted by respondent for purposes of that proceeding or any other licensing proceeding  
8 involving Respondent in the State of California.

9 12. Respondent understands that, by signing this stipulation, he agrees to be bound by the  
10 Board's probationary terms as set forth in the Disciplinary Order below.

11 **CONTINGENCY**

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

22 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
23 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
24 signatures thereto, shall have the same force and effect as the originals.

25 15. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
26 be an integrated writing representing the complete, final and exclusive embodiment of the  
27 agreement of the parties in this above entitled matter.

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1 been approved by the Board or its designee had the course been taken after the effective date of  
2 this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its  
4 designee not later than fifteen (15) calendar days after successfully completing the course, or not  
5 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

6 3. NOTIFICATION. Prior to engaging in the practice of medicine, the Respondent shall  
7 provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief  
8 Executive Officer at every hospital where privileges or membership are extended to Respondent,  
9 at any other facility where Respondent engages in the practice of podiatric medicine, including all  
10 physician and locum tenens registries or other similar agencies, and to the Chief Executive  
11 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.  
12 Respondent shall submit proof of compliance to the Division or its designee within fifteen (15)  
13 calendar days.

14 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

15 4. PHYSICIAN ASSISTANTS. Prior to receiving assistance from a physician assistant,  
16 Respondent must notify the supervising physician of the terms and conditions of his/her  
17 probation.

18 5. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
19 governing the practice of podiatric medicine in California and remain in full compliance with any  
20 court ordered criminal probation, payments, and other orders.

21 6. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
22 under penalty of perjury on forms provided by the Board, stating whether there has been  
23 compliance with all the conditions of probation. Respondent shall submit quarterly declarations  
24 not later than ten (10) calendar days after the end of the preceding quarter.

25 7. PROBATION UNIT COMPLIANCE. Respondent shall comply with the Board's  
26 probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business  
27 and residence addresses. Changes of such addresses shall be immediately communicated in  
28 writing to the Board or its designee. Under no circumstances shall a post office box serve as an

1 address of record, except as allowed by Business and Professions Code section 2021, subdivision  
2 (b). Respondent shall not engage in the practice of podiatric medicine in Respondent's place of  
3 residence. Respondent shall, maintain a current and renewed California doctor of podiatric  
4 medicine's license. Respondent shall immediately inform the Board or its designee, in writing, of  
5 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,  
6 more than thirty (30) calendar days.

7 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
8 available in person for interviews either at Respondent's place of business or at the probation unit  
9 office, with the Board or its designee upon request at various intervals and either with or without  
10 notice throughout the term of probation.

11 9. RESIDING OR PRACTICING OUT-OF-STATE. In the event Respondent should  
12 leave the State of California to reside or to practice, Respondent shall notify the Board or its  
13 designee in writing thirty (30) calendar days prior to the dates of departure and return. Non-  
14 practice is defined as any period of time exceeding thirty calendar days in which Respondent is  
15 not engaging in any activities defined in section 2472 of the Business and Professions Code.

16 All time spent in an intensive training program outside the State of California which has  
17 been approved by the Board or its designee shall be considered as time spent in the practice of  
18 medicine within the State. A Board-ordered suspension of practice shall not be considered as a  
19 period of non-practice. Periods of temporary or permanent residence or practice outside, will not  
20 apply to the reduction of the probationary term. Periods of temporary or permanent residence or  
21 practice outside California will relieve Respondent of the responsibility to comply with the  
22 probationary terms and conditions with the exception of this condition and the following terms  
23 and conditions of probation: Obey All Law; Probation Unit Compliance; and Cost Recovery.

24 Respondent's license shall be automatically cancelled if Respondent's periods of temporary  
25 or permanent residence or practice outside California totals two (2) years. However,  
26 Respondent's license shall not be cancelled as long as Respondent is residing and practicing

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1 podiatric medicine in another state of the United States and is on active probation with the  
2 medical licensing authority of that state, in which case the two (2) year period shall begin on the  
3 date probation is completed or terminated in that state.

4 10. FAILURE TO PRACTICE PODIATRIC MEDICINE – CALIFORNIA RESIDENT.

5 In the event the Respondent resides in the State of California and for any reason Respondent stops  
6 practicing podiatric medicine in California, Respondent shall notify the Board or its designee in  
7 writing within thirty (30) calendar days prior to the dates of non-practice and return to practice.  
8 Any period of non-practice within California, as defined in this condition, will not apply to the  
9 reduction of the probationary term and does not relieve Respondent of the responsibility to  
10 comply with the terms and conditions of probation. Non-practice is defined as any period of time  
11 exceeding thirty (30) calendar days in which Respondent is not engaging in any activities defined  
12 in section 2472 of the Business and Professions Code.

13 All time spent in an intensive training program which has been approved by the Board or its  
14 designee shall be considered time spent in the practice of medicine. For purposes of this  
15 condition, non-practice due to a Board-ordered suspension or in compliance with any other  
16 condition of probation, shall not be considered a period of non-practice.

17 Respondent's license shall be automatically cancelled if Respondent resides in California  
18 and for a total of two (2) years, fails to engage in California in any of the activities described in  
19 Business and Professions Code section 2472.

20 11. COMPLETION OF PROBATION. Respondent shall comply with all financial  
21 obligations (e.g., cost recovery, restitution, probation costs) not later than one hundred twenty  
22 (120) calendar days prior to the completion of probation. Upon successful completion of  
23 probation, Respondent's certificate will be fully restored.

24 12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
25 of probation is a violation of probation. If Respondent violates probation in any respect, the  
26 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
27 carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation,  
28 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have



1 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
2 the matter is final.

3 13. COST RECOVERY. Within ninety (90) calendar days from the effective date of the  
4 Decision or other period agreed to by the Board or its designee, Respondent shall reimburse the  
5 Board the amount of \$19,500.00 for its investigative and prosecution costs. The filing of  
6 bankruptcy or period of non-practice by Respondent shall not relieve the Respondent of his/her  
7 obligation to reimburse the Board for its costs.

8 14. LICENSE SURRENDER. Following the effective date of this Decision, if  
9 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy  
10 the terms and conditions of probation, Respondent may request the voluntary surrender of  
11 Respondent's license. The Board reserves the right to evaluate the Respondent's request and to  
12 exercise its discretion whether to grant the request, or to take any other action deemed appropriate  
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
14 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the  
15 Board or its designee and Respondent shall no longer practice podiatric medicine. Respondent  
16 will no longer be subject to the terms and conditions of probation and the surrender of  
17 Respondent's license shall be deemed disciplinary action.

18 If Respondent re-applies for a podiatric medical license, the application shall be treated as a  
19 petition for reinstatement of a revoked certificate.

20 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
21 with probation monitoring each and every year of probation, as designated by the Board, which  
22 may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric  
23 Medicine and delivered to the Board or its designee within sixty (60) days after the start of the  
24 new fiscal year. Failure to pay costs within thirty (30) calendar days of this date is a violation of  
25 probation.

26 16. NOTICE TO EMPLOYEES. Respondent shall, upon or before the effective date of  
27 this Decision, post or circulate a notice which actually recites the offenses for which Respondent  
28 has been disciplined and the terms and conditions of probation, to all employees involved in

1 his/her practice. Within fifteen (15) days of the effective date of this Decision, Respondent shall  
2 cause his/her employees to report to the Podiatric Medical Board of California in writing,  
3 acknowledging the employees have read the Accusation and Decision in the case and understand  
4 Respondent's terms and conditions of probation.

5 17. CHANGES OF EMPLOYMENT. Respondent shall notify the Podiatric Medical  
6 Board of California in writing, through the assigned probation officer, of any and all changes of  
7 employment, location, and address within thirty (30) days of such change.

8 18. COMPLIANCE WITH REQUIRED CONTINUING MEDICAL EDUCATION.  
9 Respondent shall submit satisfactory proof biennially to the Podiatric Medical Board of  
10 California of compliance with the requirement to complete fifty (50) hours of approved  
11 continuing medical education, and meet continuing competence requirements for re-licensure  
12 during each two (2) year renewal period.

13 19. FUTURE ADMISSION CLAUSE: If Respondent should ever petition for early  
14 termination or modification of probation, or if the Board ever petitions for revocation of  
15 probation, all of the charges and allegations contained in Accusation No. 500-2019-000938 shall  
16 be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any  
17 other licensing proceeding involving Respondent in the State of California.

18 If Respondent should ever apply or reapply for a new license or certification, or petition for  
19 reinstatement of a license, by any other health care licensing action agency in the State of  
20 California, all of the charges and allegations contained in Accusation No. 500-2019-000938 shall  
21 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of  
22 Issues or any other proceeding seeking to deny or restrict license.

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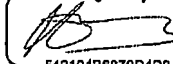
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**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, C. Keith Greer. I understand the stipulation and the effect it will have on my Podiatric License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Podiatric Medical Board.


DATED: 6/13/2023

DocuSigned by:  
  
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MICHAEL M. FANOUS, D.P.M.  
*Respondent*

I have read and fully discussed with Respondent, Michael M. Fanous, D.P.M., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/12/2023

DocuSigned by:  
  
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C. KEITH GREER  
*Attorney for Respondent*

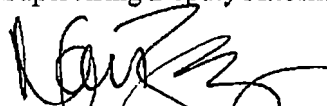
**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Podiatric Medical Board of California.

DATED: 6/13/2023

Respectfully submitted,

ROB BONTA  
Attorney General of California  
JUDITH T. ALVARADO  
Supervising Deputy Attorney General

  
MARSHA E. BARR-FERNANDEZ  
Deputy Attorney General  
*Attorneys for Complainant*

LA2022602298

**Exhibit A**

**Accusation No. 500-2019-000938**

1 ROB BONTA  
 Attorney General of California  
 2 JUDITH T. ALVARADO  
 Supervising Deputy Attorney General  
 3 MARSHA BARR-FERNANDEZ  
 Deputy Attorney General  
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 8 **BEFORE THE**  
 9 **PODIATRIC MEDICAL BOARD OF CALIFORNIA**  
 10 **DEPARTMENT OF CONSUMER AFFAIRS**  
 11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:  13 <b>MICHAEL M. FANOUS, D.P.M.</b> 2834 Hamner Ave. #113 14 Norco, CA 92860 Podiatric License No. E 3544,  15 Respondent.	Case No. 500-2019-000938  <b>ACCUSATION</b>
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16  
 17 **PARTIES**

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

20 2. On or about August 15, 1988, the Podiatric Medical Board issued Podiatric License  
 21 Number E 3544 to MICHAEL M. FANOUS, D.P.M. (Respondent). The Podiatric License was in  
 22 full force and effect at all times relevant to the charges brought herein and will expire on June 30,  
 23 2024, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Podiatric Medical Board (Board), Department  
 26 of Consumer Affairs, under the authority of the following laws. All section references are to the  
 27 Business and Professions Code (Code) unless otherwise indicated.

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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 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.

5. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

6. 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:

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

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

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

7. 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.

**STATUTORY PROVISIONS**

8. Section 2225.5 of the Code states in relevant part as follows:

(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

...

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, certified medical records means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

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9. Section 2234 of the Code, states:

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.

(d) Incompetence.

(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.

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

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

10. 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.

**COST RECOVERY**

11. 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.



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

6 (c) When the payment directed in the board's order for payment of costs is not  
7 made by the licensee, the board may enforce the order for payment by bringing an  
8 action in any appropriate court. This right of enforcement shall be in addition to any  
9 other rights the board may have as to any licensee directed to pay costs.

10 (d) In any judicial action for the recovery of costs, proof of the board's decision  
11 shall be conclusive proof of the validity of the order of payment and the terms for  
12 payment.

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

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

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

23 **FACTUAL ALLEGATIONS**

24 12. On May 3, 2019, 48-year-old Patient A<sup>1</sup> presented to Respondent with a chief  
25 complaint of significant bilateral foot and ankle pain. She pointed to the front and outside of her  
26 ankles (bilateral sinus tarsi canal)<sup>2</sup> and heels as the most painful points of her feet. There was no  
27 report of history of trauma. She also reported to Respondent a past medical history of diabetes  
28 mellitus with neuropathy,<sup>3</sup> hypertension, and positive numbness, tingling sensation, and  
paresthesia<sup>4</sup> in both lower extremities. Upon examination, Respondent diagnosed Patient A with a  
number of conditions, including but not limited to, (1) painful plantar fasciitis,<sup>5</sup> bilaterally; (2)  
painful sinus tarsi syndrome/sinus tarsitis, bilaterally; and (3) painful bunion deformity, bilaterally.

<sup>1</sup> To protect the privacy of the patient involved, the patient's name has not been included  
in this pleading. Respondent is aware of the identity of the patient referred herein.

<sup>2</sup> The tarsal sinus (or sinus tarsi) is a small tunnel containing nerves, ligaments, and blood  
vessels located on the lateral (outside) side of the hindfoot (at the front and outside of the ankle).

<sup>3</sup> Diabetic neuropathy is a type of nerve damage that can occur in someone with diabetes.

<sup>4</sup> Paresthesia refers to an abnormal sensation, typically tingling or pricking ("pins and  
needles").

<sup>5</sup> Plantar fasciitis is a condition that causes pain on the bottom of the heel.

1 Respondent discussed cortisone injection therapy with Patient A to treat the plantar fasciitis and  
2 sinus tarsi syndrome. Cortisone injection therapy was provided that day by injections to the  
3 plantar medial aspect of the bilateral calcaneus (heel bone) and to the sinus tarsi canal of the  
4 bilateral ankle. Among other things, she was instructed to return to the office in 1 week for x-ray  
5 evaluation and further recommendations.

6 13. Despite knowing that Patient A had diabetes mellitus with neuropathy, Respondent  
7 did not coordinate with Patient A's primary care physician who was managing her diabetes or  
8 otherwise determine the status of her diabetes control by obtaining, for example, pertinent medical  
9 records, before administering the cortisone injections. Respondent's administration of cortisone  
10 injections without coordinating Patient A's care with her previously established medical care  
11 providers or otherwise determining the status of her diabetes control by obtaining, for example,  
12 pertinent medical records, was a simple departure from the standard of care. Had Respondent  
13 coordinated with Patient A's primary care physician or obtained pertinent medical records, he  
14 would have learned that Patient A's diabetes was poorly controlled and that her last HgA1c level  
15 two weeks earlier on April 15, 2019 was 9.1% (normal range is 4.8-5.6%). This information is  
16 important to note because administering steroids to a known diabetic carries the risk of disrupting  
17 glucose control and can lead to acute decompensation.

18 14. Patient A returned to Respondent's office on May 11, 2019 for x-ray evaluation  
19 and further recommendations. The x-rays performed at an outside facility confirmed the bunion  
20 deformity of the first toe bilaterally and contracted pinky toe (hammertoe) bilaterally. Respondent  
21 discussed treatment options for the bunions and hammertoes with Patient A. They made plans for  
22 a bunionectomy with osteotomy<sup>6</sup> and internal fixation and arthroplasty<sup>7</sup> fifth toe, right foot, to be  
23 followed by the left foot at a later date.

24 15. On May 21, 2019, Patient A presented to Respondent's office for surgical  
25 consultation. Respondent conducted a history and physical and indicated the patient "is cleared  
26 for surgery, pending laboratory workup, EKG, and chest x-ray clearance as well." He also gave

27 <sup>6</sup> Bunionectomy with osteotomy is a surgery to realign the toe joint and involves removing  
28 or shaving the bone to realign or shorten the joint using surgical cuts.

<sup>7</sup> Arthroplasty is a surgical procedure to restore the function of a joint.

1 Patient A a prescription for Norco and Keflex and instructed her to stop taking certain medications  
2 before surgery.

3 16. On May 22, 2019, Respondent performed surgery on Patient A. During the  
4 bunionectomy, Respondent placed a screw in the bone for fixation. Patient A was discharged with  
5 instructions to take her postoperative medication, to keep her appointments with Respondent, and  
6 to ambulate in a surgical shoe, only.

7 17. Despite knowing that Patient A had diabetes mellitus with neuropathy, Respondent  
8 did not coordinate with Patient A's primary care physician who was managing her diabetes to  
9 request him to clear Patient A for surgery before performing surgery. Respondent's failure to  
10 coordinate Patient A's care with her previously established medical care providers was a simple  
11 departure from the standard of care. Had Respondent coordinated with Patient A's primary care  
12 physician or obtained her medical records, he would have learned that Patient A's diabetes was  
13 poorly controlled and that her last HgA1c level on April 15, 2019 was 9.1% (normal range is 4.8-  
14 5.6%). This information was important to note because it was an indication that Patient A was at  
15 even greater risk for surgical complications, including but not limited to, surgical site infection,  
16 osteomyelitis (bone infection), malunion or nonunion of fractures, impaired wound healing, and  
17 hardware/implant failure, all of which occurred here.

18 18. On May 28, 2019, Patient A presented to Respondent's office for her first post-  
19 operative visit. Patient A was noted to have ambulated to the office in a dry, clean dressing and  
20 surgical shoe as instructed and to be taking antibiotics as prescribed. Respondent's assessment  
21 was that Patient A was "improving nicely and uneventfully." Respondent, however, failed to  
22 perform post-operative x-rays at this visit as required by the standard of care. X-rays must be  
23 performed in the early post-operative period after the patient ambulates to confirm the sustenance  
24 of the fixation, the maintenance of the alignment, correction, and the fixation, and to rule out  
25 hardware or implant failure. Respondent's failure to perform post-operative x-rays was a simple  
26 departure from the standard of care.

27 19. On June 4, 2019, Patient A presented to Respondent's office for another post-  
28 operative visit. Patient A was noted to have ambulated in the office in a surgical shoe.

1 Respondent's assessment was again that Patient A was "improving nicely and uneventfully." He  
2 instructed her to return for another follow-up appointment in one (1) week. Respondent once  
3 again failed to perform post-operative x-rays at this visit as required by the standard of care.  
4 Respondent's failure to perform post-operative x-rays was a simple departure from the standard of  
5 care.

6 20. On June 11, 2019, Patient A presented to Respondent's office as instructed for a  
7 post-operative visit. Respondent's assessment again was that Patient A was "improving nicely and  
8 uneventfully." She was instructed to return for another follow-up appointment in two (2) weeks.  
9 Respondent once again failed to perform post-operative x-rays at this visit as required by the  
10 standard of care. Respondent's failure to perform post-operative x-rays was a simple departure  
11 from the standard of care.

12 21. On June 21, 2019, Patient A presented to Respondent's office as instructed for a  
13 post-operative visit. Respondent's assessment again was that Patient A was "improving nicely and  
14 uneventfully." She was instructed to return for another follow-up appointment in two (2) weeks  
15 for x-ray evaluation. Respondent once again failed to perform post-operative x-rays at this visit as  
16 required by the standard of care. Respondent's failure to perform post-operative x-rays was a  
17 simple departure from the standard of care.

18 22. On June 28, 2019, Patient A presented to Respondent's office stating that "she had  
19 bumped her incision twice." The note is unsigned. An unidentified member of Respondent's staff  
20 applied a 4x4 dressing and secured it with a bandage. Respondent was not present in the office  
21 this day and did not examine Patient A's wound nor were photographs of the foot taken. On this  
22 day, Respondent had his staff call in a prescription for Bactrim DS, an antibiotic, for Patient A.  
23 Respondent did not document the justification for the prescription.

24 23. On July 2, 2019, Patient A presented to Respondent's office for follow-up. On  
25 this day, Respondent noted that Patient A was "taking antibiotics due to slight cellulitis"<sup>8</sup> and that  
26 "[s]light erythema"<sup>9</sup> is noted, significantly improved since previous visit." Photographs taken of

27  
28 <sup>8</sup> Cellulitis is a deep infection of the skin caused by bacteria.

<sup>9</sup> Erythema is a superficial reddening of the skin as a result of injury or irritation.

1 Patient A's foot depict cellulitis and erythema and an ulceration (break on the skin) overlying the  
2 site of the surgical implant (screw). Respondent's assessment was that Patient A was: "1. Status  
3 post R foot surgery, improving nicely and uneventfully; 2. Cellulitis." Patient A was instructed to  
4 return for follow-up in 1 week. Respondent again failed to perform post-operative x-rays. At this  
5 visit, post-operative x-rays were required not only for the reasons set forth above, but also because  
6 at this visit, Patient A had an ulceration overlying a surgical implant. Respondent's failure to  
7 obtain post-operative x-rays subsequent to trauma and ulceration is an extreme departure from the  
8 standard of care. In addition, Respondent failed to obtain a culture and sensitivity at the site of the  
9 traumatic ulceration overlying the internal fixation in this poorly-controlled diabetic patient with  
10 cellulitis. Respondent's failure to perform a culture and sensitivity at the site of an ulceration  
11 overlying implanted surgical hardware is an extreme departure from the standard of care.

12 24. On July 9, 2019, Patient A presented to Respondent's office for follow-up. On  
13 this day, Respondent documented that Patient A had no edema, no erythema, and no signs of  
14 infection. Photographs taken of Patient A's foot at this visit, however, depict apparent cellulitis,  
15 erythema, and an ulceration (break on the skin) overlying the site of the surgical implant (screw).  
16 Respondent's assessment once again was that Patient A was "improving nicely and uneventfully."  
17 Patient A was instructed to return for follow-up on July 30, 2019 for continued follow-up. At this  
18 visit, Respondent again failed to perform post-operative x-rays subsequent to Patient A sustaining  
19 an ulceration overlying a surgical implant. Respondent's failure to obtain post-operative x-rays  
20 subsequent to trauma and ulceration is an extreme departure from the standard of care. In  
21 addition, Respondent failed to obtain a culture and sensitivity at the site of the traumatic ulceration  
22 overlying the internal fixation in this poorly-controlled diabetic patient with cellulitis.  
23 Respondent's failure to perform a culture and sensitivity at the site of an ulceration overlying  
24 implanted surgical hardware is an extreme departure from the standard of care.

25 25. On July 17, 2019, Patient A presented to her primary care physician for a routine  
26 follow-up visit. She complained to her primary care physician of pain, swelling, and bruising of  
27 the right toe. Her primary care physician ordered a foot x-ray to rule out osteomyelitis.

28 ///

1           26.    On July 22, 2019, Patient A's primary care physician reviewed the report of the x-  
2 ray of the right foot. The report indicated there was bony erosion at the osteotomy site with soft  
3 tissue swelling suspicious for osteomyelitis. Patient A's primary care physician communicated  
4 these findings to Patient A and arranged to have her admitted to the hospital that day.

5           27.    Patient A was hospitalized from July 22, 2019 to July 25, 2019. During the  
6 hospitalization, the healthcare providers noted she presented with a right first toe infection with  
7 ulceration, redness, and swelling. It was determined that she had a nonunion of the great toe and  
8 the screw was backing out through the skin with a sinus tract.<sup>10</sup> Although an MRI did not show  
9 osteomyelitis within the osteotomy, the fact that there was a nonunion and the screw was backing  
10 out through the skin, caused the providers to be concerned the bacterial infection would go down  
11 the screw and seed an infection to the bone. With her history of diabetes, this put Patient A at risk  
12 for the infection spreading and amputation of the toe. For those reasons, she was placed on a six-  
13 week course of IV antibiotics.

14           28.    The six-week IV antibiotic therapy required Patient A to undergo placement of a  
15 PICC line<sup>11</sup> and monitoring of the line by home health nurses.

16           29.    On August 15, 2019, Patient A presented to the hospital with diarrhea. The  
17 infectious disease physician was concerned that the antibiotic therapy contributed to a  
18 *Clostridioides difficile* (*C. difficile*)<sup>12</sup> infection and for that reason, discontinued the IV antibiotic  
19 therapy and started her on oral vancomycin (antibiotic). She was discharged on oral Cipro, Flagyl,  
20 and Questran (all antibiotics) for ten (10) days.

21           30.    On October 25, 2019, after completing her antibiotic therapy, Patient A underwent  
22 removal of the protruding screw.

23           31.    On December 9, 2019, January 21, 2020, February 24, 2020, and April 30, 2020,  
24 an investigator for the Board sent written requests for Patient A's certified records to Respondent

25           <sup>10</sup> A sinus tract is a narrow opening or passageway extending from a wound underneath  
26 the skin through soft tissue, usually from the cause of infection to the skin's surface.

26           <sup>11</sup> A PICC line (peripherally inserted central catheter) is a catheter that is thicker and more  
27 durable than a regular intravenous line and can stay in place longer.

27           <sup>12</sup> *Clostridioides difficile* is a germ (bacterium) that causes severe diarrhea and colitis  
28 (inflammation of the colon). In patients who are on antibiotic therapy, those antibiotics can kill  
the "good" bacteria in the intestinal tract and allow *C. difficile* bacteria to multiply.

1 through his counsel. The written requests were accompanied by Patient A's written authorization  
2 for release of records to the Board. Certified medical records were not provided.

3 32. On May 13, 2020, an investigator for the Board mailed a request for Patient A's  
4 certified records to Respondent directly. The request was accompanied by Patient A's written  
5 authorization for release of records to the Board.

6 33. On June 4, 2020, Respondent's Counsel emailed Patient A's uncertified medical  
7 records to the investigator.

8 34. On July 29, 2020, the investigator for the Board received a certification for Patient  
9 A's medical records.

10 35. On October 13, 2020, the investigator for the Board sent a request for imaging  
11 studies that were not included in Patient A's records from Respondent. The request was  
12 accompanied by Patient A's written authorization for release of records to the Board.

13 36. On October 23, 2020, Respondent's counsel emailed five (5) x-rays to the Board's  
14 investigator. No certification was provided.

15 37. On March 16, 2021, the investigator for the Board corresponded with  
16 Respondent's counsel requesting Respondent appear for an interview.

17 38. On April 15, 2021, Respondent's counsel advised that Respondent would  
18 voluntarily appear for an interview. The interview was scheduled for April 27, 2021.

19 39. On April 27, 2021, the District Medical Consultant and the investigator for the  
20 Board were prepared to interview Respondent. On that day, Respondent's counsel advised the  
21 investigator for the Board that Respondent would not appear for the interview that day, that a  
22 subpoena to appear would be required, and that Respondent's counsel would accept service of the  
23 subpoena.

24 40. On April 28, 2021, a subpoena was served on Respondent's counsel requiring  
25 Respondent to appear in person at the field office to be interviewed on May 11, 2021.

26 41. On May 11, 2021, without giving prior notice of intent to not appear at the address  
27 set forth on the subpoena, Respondent's counsel advised the investigator for the Board that  
28

1 Respondent would not appear for the interview in person and that a phone appearance should be  
2 acceptable.

3 42. On May 11, 2021, Respondent was interviewed over the phone but refused to  
4 answer all of the questions. During the interview, Respondent identified records he claimed to be  
5 part of Patient A's medical record which had not previously been produced to the investigator for  
6 the Board.

7 43. On May 11, 2021, after the interview was completed, Respondent, through his  
8 counsel, provided previously unproduced surgical consents claimed to be part of Patient A's  
9 records to the Board's investigator. The records were not certified.

10 44. On May 11, 13, 24, and 25, 2021, the Board's investigator requested certification  
11 of the records.

12 45. On July 1, 2021, Respondent's counsel provided the Board's investigator with a  
13 certification reflecting the complete record count of forty-four (44) pages.

14 46. On September 14, 2021, the Board's investigator sent a written request to  
15 Respondent's counsel for Patient A's billing records as those were not included in the records  
16 produced. The request was accompanied by Patient A's written authorization for release of  
17 records to the Board.

18 47. On October 25, 2021, Respondent's counsel produced incomplete billing records  
19 without certification.

20 48. On December 2, 2021, Respondent's counsel produced the certification for the  
21 incomplete billing records.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct: Gross Negligence and/or**  
24 **Repeated Negligent Acts and/or Incompetence)**

25 49. On December 2, 2021, Respondent's counsel produced the certification for the  
26 incomplete billing records.

27 50. Respondent is subject to disciplinary action under Code section 2234, subdivisions  
28 (b) and/or (c) and/or (d) in that Respondent was grossly negligent and/or committed repeated



1 negligent acts and/or was incompetent in his care and treatment of Patient A. The circumstances  
2 are as follows:

3 51. Paragraphs 12 through 30 are incorporated by reference as though fully set forth  
4 herein.

5 52. Respondent's administration of cortisone injections on May 3, 2019 without  
6 coordinating Patient A's care with her previously established medical care providers or otherwise  
7 determining the status of her diabetes control by obtaining, for example, pertinent medical records,  
8 was a simple departure from the standard of care constituting incompetence.

9 53. Respondent's failure to coordinate Patient A's surgical clearance on or before May  
10 22, 2019 with her previously established medical care providers was a simple departure from the  
11 standard of care constituting repeated negligent acts and incompetence.

12 54. Respondent's failure to perform post-operative x-rays at the visit of May 28, 2019  
13 was a simple departure from the standard of care constituting repeated negligent acts and  
14 incompetence.

15 55. Respondent's failure to perform post-operative x-rays at the visit of June 4, 2019  
16 was a simple departure from the standard of care constituting repeated negligent acts and  
17 incompetence.

18 56. Respondent's failure to perform post-operative x-rays at the visit of June 11, 2019  
19 was a simple departure from the standard of care constituting repeated negligent acts and  
20 incompetence.

21 57. Respondent's failure to perform post-operative x-rays at the visit of June 21, 2019  
22 was a simple departure from the standard of care constituting repeated negligent acts and  
23 incompetence.

24 58. Respondent's failure to perform post-operative x-rays at the visit of July 2, 2019  
25 was an extreme departure from the standard of care constituting gross negligence, repeated  
26 negligent acts, and incompetence.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Failure to Attend and Participate in an Interview)**

66. Respondent is subject to disciplinary action under Code section 2234, subdivision (g) in that Respondent failed to attend and participate in an interview by the board. The circumstances are as follows:

67. Paragraphs 37 through 42 are incorporated by reference as though fully set forth herein.

68. Respondent's failure to attend and participate in the interview scheduled for April 27, 2021 constitutes unprofessional conduct.

69. Respondent's failure to attend in person to participate in the interview scheduled for May 11, 2021 pursuant to subpoena, constitutes unprofessional conduct.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure or Refusal to Comply with Request for Certified Records)**

70. Respondent is subject to civil penalties, up to ten thousand dollars (\$10,000), under Code section 2225.5 in that Respondent failed to and/or refused to comply with a request for certified medical records, that was accompanied by the patient's written authorization for release of records to the Board, within 15 days of receiving the request and authorization. The circumstances are as follows:

71. Paragraphs 31 through 48 are incorporated by reference as though fully set forth herein.

72. Respondent failed or refused to comply with the Board's written request for certified records, including medical, imaging, and billing records, starting on December 9, 2019 necessitating the Board make repeated requests for the records on January 21, 2020, February 24, 2020, April 30, 2020, and May 13, 2020.

73. When Respondent produced Patient A's records on June 4, 2020 – one-hundred-seventy-eight (178) days after the request was made, the records were uncertified. Respondent did not provide a certification until July 29, 2020 – fifty-five (55) days after production.



1           82.    In a disciplinary action titled *In the Matter of the Accusation Against Michael M.*  
2 *Fanous, D.P.M.* before the Board of Podiatric Medicine, in Case Number D-5234, Respondent's  
3 license was revoked effective April 7, 1995<sup>13</sup> for unprofessional conduct pursuant to:

4           (1) Business and Professions Code sections 2222 and 2234(b) in that Respondent was  
5 guilty of gross negligence as a result of his "conduct in examining patient L without  
6 the presence of her parent or another adult, pulling her underpants down for his  
7 examination, taking measurements from her groin, and touching her vagina during his  
8 examination;"

9           (2) Business and Professions Code sections 2222 and 2234(d) in that Respondent  
10 demonstrated incompetence in the course of treating a patient based on Respondent's  
11 "conduct in pulling patient L's underpants down for his examination, taking  
12 measurements from her groin, and touching her vagina during his examination;"

13           (3) Business and Professions Code sections 2222, 2234, and 726 in that Respondent  
14 committed sexual abuse or misconduct with a patient which is substantially related to  
15 the qualifications, function, or duties of a licensed podiatrist based on Respondent's  
16 "conduct in pulling patient L's underpants down for his examination, taking  
17 measurements from her groin, and touching her vagina with his instrument and hands,  
18 and opening her vagina with his hands during his examination."

19           83.    In a disciplinary action titled *In the Matter of the Letter of Public Reprimand*  
20 *Against Michael M. Fanous, D.P.M.* before the Board of Podiatric Medicine, in Case Number 1B-  
21 2012-228238, on July 24, 2015, Respondent was issued a Public Letter of Reprimand in  
22 connection with his treatment of a patient with peripheral artery disease in December 2011  
23 because Respondent proceeded to perform surgery before obtaining a vascular consultation.

24    ///

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27           \_\_\_\_\_  
28           <sup>13</sup> Respondent's license was reinstated in 2003.

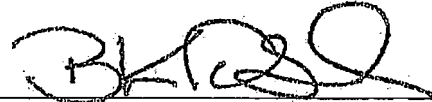
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**PRAYER**

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

1. Revoking or suspending Podiatric License Number E 3544, issued to MICHAEL M. FANOUS, D.P.M.;
2. Ordering Michael M. Fanous, D.P.M. to pay the Podiatric Medical Board civil penalties of up to ten thousand (\$10,000) dollars for his failure or refusal to comply with the request for the certified medical records of Patient A;
3. Ordering Michael M. Fanous, D.P.M. to pay the Podiatric Medical Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5; and,
4. Taking such other and further action as deemed necessary and proper.

DATED:     JUL 27 2022    

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

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Accusation.docx