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

11 In the Matter of the Accusation Against:

Case No. 500-2023-001442

12 **HENRY RICK TSENG, D.P.M.**
13 **2707 E. Valley Boulevard, Suite 303**
West Covina, CA 91792

ACCUSATION

14 **Doctor of Podiatric Medicine License No.**
15 **E-4127,**

16 Respondent.

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 (Board).

20 2. On or about February 11, 1998, the Board issued Podiatrist License Number E-4127
21 to Henry Rick Tseng, D.P.M. (Respondent). The Podiatrist License was in full force and effect at
22 all times relevant to the charges brought herein and will expire on September 30, 2025, unless
23 renewed.

24 **JURISDICTION**

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

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.

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1 6. Section 2228 of the Code states:

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

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

9 (b) Requiring the licensee to submit to a complete diagnostic examination by
10 one or more physicians and surgeons appointed by the board. If an examination is
11 ordered, the board shall receive and consider any other report of a complete
12 diagnostic examination given by one or more physicians and surgeons of the
13 licensee's choice.

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

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

19 7. Section 2497 of the Code states:

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

24 (b) The board may hear all matters, including but not limited to, any contested
25 case or may assign any such matters to an administrative law judge. The proceedings
26 shall be held in accordance with Section 2230. If a contested case is heard by the
27 board itself, the administrative law judge who presided at the hearing shall be present
28 during the board's consideration of the case and shall assist and advise the board.

STATUTORY PROVISIONS

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

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

9 (d) Incompetence.

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

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

14 (g) The failure by a certificate holder, in the absence of good cause, to attend
15 and participate in an interview by the board no later than 30 calendar days after being
16 notified by the board. This subdivision shall only apply to a certificate holder who is
17 the subject of an investigation by the board.

18 (h) Any action of the licensee, or another person acting on behalf of the
19 licensee, intended to cause their patient or their patient's authorized representative to
20 rescind consent to release the patient's medical records to the board or the
21 Department of Consumer Affairs, Health Quality Investigation Unit.

22 (i) Dissuading, intimidating, or tampering with a patient, witness, or any person
23 in an attempt to prevent them from reporting or testifying about a licensee.

24 9. Section 2261 of the Code states:

25 Knowingly making or signing any certificate or other document directly or indirectly
26 related to the practice of medicine or podiatry which falsely represents the existence or
27 nonexistence of a state of facts, constitutes unprofessional conduct.

28 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 for at least seven years after the last
date of a service to a patient 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.

(b) The costs to be assessed shall be fixed by the administrative law judge and
shall not be increased by the board unless the board does not adopt a proposed

1 decision and in making its own decision finds grounds for increasing the costs to be
2 assessed, not to exceed the actual and reasonable costs of the investigation and
3 prosecution of the case.

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

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

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

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

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

22 FACTUAL ALLEGATIONS

23 12. Patient 1¹ was 36 years old when she presented to Respondent for examination and
24 treatment. Patient 1 maintains that she saw Respondent on only one occasion, but Patient 1's chart
25 maintained by Respondent contains office visit notes for two (2) visits.

26 Office Note Dated December 11, 2021.

27 13. Per a handwritten office note dated December 11, 2021, Patient 1 presented with a
28 chief complaint of an ingrown nail on her right toe and calluses on the bottom of her right foot.
Patient 1 reported the ingrown toenail and calluses on the bottom of her right foot had been present
for one year. Patient 1 reported that there was no history of diabetes mellitus, pus, blood, or
trauma.

14. Respondent documented a physical examination of Patient 1. Respondent
recorded a dorsalis pedis (DP) pulse (an arterial pulse which can be felt on top of the foot in front
of the ankle) and a posterior tibial (PT) pulse (an arterial pulse which can be felt behind the inner

¹ 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.

1 prominence of the ankle) of 2 out of 4. Respondent did not indicate whether this finding referred
2 to the pulses of the right foot only or pulses of both the right and left feet. Respondent did not
3 record the capillary refill time.

4 15. Respondent documented a finding of tinea pedis (a fungal skin infection
5 commonly known as athlete's foot) on the bottom of Patient 1's foot. Respondent did not
6 document whether the tinea pedis was found on one or both of Patient 1's feet.

7 16. Respondent did not record any examination findings regarding the calluses.

8 17. Respondent did not document skin temperature.

9 18. Respondent noted muscle strength of 5/5, normal joint range of motion, normal
10 gait, and a normal neurologic examination (normal sensation and reflexes).

11 19. Respondent documented that he performed a partial nail avulsion (a surgical
12 procedure during which the healthcare provider cuts the nail along the edge that is growing into
13 the skin and removes it). Respondent sent the toenail specimen to a pathology lab for evaluation.
14 Respondent did not author a procedure note, a record or operation, or otherwise document the
15 partial nail avulsion in the record.

16 20. During Respondent's interview with the Board, Respondent stated that he did not
17 use anesthesia during the nail avulsion of the right hallux (right big toe) and that he removed about
18 80% of the nail margin during the avulsion on December 11, 2021.

19 21. Respondent billed Patient 1's medical insurance for the visit. As is required,
20 Respondent used CPT codes to bill the insurance. CPT stands for Current Procedural
21 Terminology. CPT codes are used to reflect testing, procedures, evaluations, and other services
22 provided to a client or patient in the healthcare field. CPT modifiers are two characters (letter or
23 numbers) appended to a CPT code. They are used to provide additional information or adjust care
24 descriptions about the medical procedure, service, or supply involved without changing the
25 meaning of the code. CPT modifiers may describe various aspects of the procedure, such as
26 multiple procedures, necessity, or location.

27 22. When Respondent billed Patient 1's insurance company for the partial nail
28 avulsion, Respondent billed using CPT Code 11730 with TA modifier. When billing CPT Code

1 11730, local anesthetic is considered inclusive to the procedure. The TA modifier indicates the
2 nail avulsion was performed on the great toe of the left foot. There is no documentation in the
3 record that indicates that Patient 1 had complaints relating to the great toe of the left foot on
4 December 11, 2021.

5 23. Patient 1 stated that Respondent trimmed all ten of her toenails at the time of the
6 visit of December 11, 2021. Toenail debridement involves the significant reduction in the
7 thickness and length of the nail. The office note does not reflect any documentation of toenail
8 trimming or toenail debridement on that date. Respondent billed Patient 1's insurance company
9 for toenail debridement using CPT Code 11721, which is the code for debridement of six (6) or
10 more toenails by any method.

11 24. Respondent also billed CPT Code 11055 for Patient 1's visit of December 11,
12 2021. CPT Code 11055 is a code use to describe the paring or cutting of a single benign
13 hyperkeratotic lesion, such as a corn or callus. This procedure is performed by a healthcare
14 provider using surgical instruments, like a scalpel or curette, to remove the lesion. There is no
15 documentation in Patient 1's office visit note of December 11, 2021, that indicates Respondent
16 performed any callus removal procedure on Patient 1 on that date.

17 25. Respondent dispensed to Patient 1 a medicated gel ointment to address the tinea
18 pedis and recommended to Patient 1 the use of over-the-counter orthotics (Superfeet) and more
19 comfortable footwear, such as New Balance tennis shoes and Oofos sandals. In addition,
20 Respondent ordered blood work and recommended Patient 1 undergo a vascular evaluation. A
21 vascular ultrasound was performed on that date in Respondent's office by a technician from
22 Diasound Services, Inc. Respondent did not document the clinical indication for ordering the
23 blood work or recommending the vascular evaluation.

24 26. The report of the ultrasound performed on December 11, 2021, became available
25 on or about December 15, 2021. The report indicated that there was "no evidence of DVT," (deep
26 vein thrombosis or blood clot), "no abnormalities noted," and that the testing on the arteries of
27 both lower extremities was indicative of normal blood flow with no stenotic lesions.

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1 27. The surgical pathology report of the examination of the nail plate from the partial
2 nail avulsion performed on December 11, 2021, became available on or about December 22, 2021.
3 It indicated that the specimen examined was “without evidence of fungal organism,” and that “no
4 fungal elements were seen with microscopy.”

5 **Office Note Dated January 22, 2022.**

6 28. Patient 1’s chart includes an office note dated January 22, 2022. On that note,
7 Respondent documented DP and PT pulses of 2 out of 4, a capillary refill time of less than 3
8 seconds, and edema of 2 out of 4. The location of the edema is not noted.

9 29. Respondent’s documented findings on examination of Patient 1’s toenails include,
10 but is not limited to, “ingrown,” “fungal,” “discolored,” “long,” “odorous,” “thick,” and “brittle.”
11 Respondent notes calluses are “painful with walking” and “painful to the touch.” Respondent did
12 not document the appearance, location, or size of the calluses.

13 30. Respondent’s assessment includes “painful onychomycosis” (fungal infection of
14 the nail plate, nail bed, or both), “painful onychocryptosis” (ingrown toenail), “painful abscess” (a
15 mass filled with pus caused by infection), “painful nucleated IPK”(intractable plantar keratomas or
16 calluses), and “painful feet.” Respondent’s plan was to “debride painful nails,” “debride painful
17 IPK’s (sic)” (removal of calluses usually by scraping with a scalpel), “I&D (incision and drainage)
18 abscess,” and “nail avulsion” (nail removal). Respondent did not record any information
19 regarding the appearance, location, or size of the abscess. Respondent did not author procedure
20 notes, records of operation, or otherwise make any entry in the record documenting the incision
21 and drainage of the abscess, the debridement of the toenails and calluses, or the removal of the
22 toenail.

23 31. Respondent noted that Patient 1 was to continue “meds,” but did not specify what
24 medications she was taking or was to continue.

25 32. When Respondent billed Patient 1’s insurance company for the nail avulsion
26 purportedly performed on January 22, 2022, Respondent again billed using CPT Code 11730 with
27 TA modifier. The TA modifier indicates the nail avulsion was performed on the great toe of the

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1 left foot. There is no documentation in the record that indicates that Patient 1 had complaints
2 relating to the great toe of the left foot on January 22, 2022.

3 33. The office note does not reflect any documentation of toenail trimming or toenail
4 debridement on January 22, 2022. Respondent billed Patient 1's insurance company for toenail
5 debridement using CPT Code 11721.

6 34. Patient 1 subsequently received a billing statement and/or an explanation of
7 benefits statement outlining charges totaling over \$600.00 for treatment purportedly provided by
8 Respondent on December 11, 2021, and January 22, 2022.

9 **The Summary of Care Dated August 18, 2023.**

10 35. On or about August 18, 2023, Respondent authored a Summary of Care for Patient
11 1 setting forth the treatment rendered on December 11, 2021, and January 22, 2022. The summary
12 of the two visits authored eighteen (18) months after the purported last visit of Patient 1 with
13 Respondent was more detailed and included information that was either different than what was
14 recorded in the office visit notes or was new information that was not included in the office visit
15 notes.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Gross Negligence)**

18 36. Respondent's license is subject to disciplinary action under section 2234,
19 subdivision (b) of the Code in that Respondent was grossly negligent in the care and treatment of
20 one patient. The circumstances are as follows:

21 37. Paragraphs 12 through 35 are incorporated by reference as though fully set forth
22 herein.

23 38. The standard of care for medical record keeping is to provide comprehensive chart
24 notes that may easily be interpreted by another medical practitioner if necessary, so that patient
25 care is not compromised if the originator of the notes is not available and for clarification of
26 treatment rationale, findings, interpretation of tests and treatment plans. In Patient 1's case,
27 Respondent's documentation was mostly illegible and did not include relevant and/or sufficient
28 clinical information to clarify treatment rationale, findings, interpretation of tests, or treatment

1 plans, or to justify treatment provided and treatment recommendations. For example,
2 Respondent's documentation did not include, among other things, the location, size, and
3 appearance of significant skin findings, such as tinea pedis, calluses, or abscesses; details
4 regarding the vascular and neurologic findings, including skin temperature and color, and whether
5 findings were unilateral or bilateral. Respondent did not author and/or include procedure notes
6 for surgical procedures performed, including but not limited to, nail avulsions, nail and callus
7 debridement, and incision and drainage of abscesses. Respondent's note also did not include
8 information justifying the referral for a vascular evaluation or the order for blood tests.
9 Respondent's failure to provide comprehensive and/or legible chart notes that may be easily
10 interpreted by another medical practitioner, if necessary, to avoid compromising the future care
11 and treatment of the patient constitutes an extreme departure from the standard of care.

12 39. The standard of care requires health care providers to bill accurately for services
13 and treatment that were justified and/or medically necessary and delivered. Failure to do so may
14 constitute falsification of patient services and is a major disruptor in the healthcare system
15 because it results in payments for patient services that were not provided. This adversely affects
16 multiple aspects of the healthcare system and can result in patient harm by depriving patients of
17 potentially necessary treatment, particularly when there are limited resources or limits on the
18 number of covered services. When the CPT 11730 is billed to an insurance company it is
19 inherent in the code that local anesthesia is required, except in those cases where there is
20 documentation that the patient is neuropathic. In addition, a procedure note, a report of operation,
21 or at least a descriptive paragraph documenting the administration of local anesthesia and the
22 details of the procedure is required to be recorded in the medical record. In Patient 1's care and
23 treatment, Respondent's billing for CPT 11730 was not supported by his documentation. This
24 constitutes an extreme departure from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

40. Respondent’s license is subject to disciplinary action under section 2234, subdivision (c) of the Code in that Respondent provided negligent care and treatment to Patient 1. The circumstances are as follows:

41. The facts and allegations set forth in the First Cause for Discipline are incorporated by reference as if fully set forth.

42. Each of the alleged acts of gross negligence set forth in the First Cause for Discipline, above, is also a negligent act.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

43. Respondent’s license is subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate medical records relating to the care and treatment he provided to Patient 1. The circumstances are as follows:

44. The facts and allegations set forth in the First and Second Causes for Discipline are realleged herein as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(False Representations)

45. Respondent is subject to disciplinary action under section 2261 of the Code in that Respondent made false representations with respect to the care and treatment provided to Patient 1. The circumstances are as follows:

46. The facts and allegations in the First, Second, and Third Causes for Discipline are incorporated herein as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

47. Respondent is subject to disciplinary action under section 2234, subdivision (a), of the Code in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

1 48. The facts and allegations in the First, Second, Third, and Fourth Causes for
2 Discipline are incorporated herein as if fully set forth.

3 **DISCIPLINE CONSIDERATIONS**


4 49. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about April 5, 2004, in a prior disciplinary action titled *In the*
6 *Matter of the Accusation Against Henry Rick Tseng, D.P.M.* before the Podiatric Medical Board,
7 in Case Number 1B-2001-121809, Respondent's license was revoked, the revocation stayed and
8 placed on three (3) years' probation with certain terms and conditions, for unauthorized practice
9 beyond the scope of his license with respect to his care and treatment of five patients. That
10 decision is now final.

11 **PRAYER**

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

- 14 1. Revoking or suspending Doctor of Podiatric Medicine License Number E-4127,
15 issued to Respondent Henry Rick Tseng, D.P.M.;
- 16 2. Ordering Respondent Henry Rick Tseng, D.P.M. to pay the Podiatric Medical Board
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 2497.5;
- 19 3. If placed on probation, ordering Respondent Henry Rick Tseng, D.P.M. to pay the
20 Podiatric Medical Board the costs of probation monitoring; and,
- 21 4. Taking such other and further action as deemed necessary and proper.

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23 DATED: OCT 09 2024

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25 BRIAN NASLUND
26 Executive Officer
27 Podiatric Medical Board
28 Department of Consumer Affairs
State of California
Complainant

LA2024604156