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

12 In the Matter of the Accusation Against:

Case No. 500-2022-001362

13 **ROGER Y. TSUTSUMI, D.P.M.**
14 **7111 Magnolia Avenue, Suite 100**
15 **Riverside, CA 92504**

ACCUSATION

16 **Doctor of Podiatric Medicine No. E 4188,**
17 **Respondent.**

18 **PARTIES**

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

21 2. On or about December 30, 1998, Podiatric Medical Board issued Doctor of Podiatric
22 Medicine License Number E 4188 to ROGER Y. TSUTSUMI, D.P.M. (Respondent). The Doctor
23 of Podiatric Medicine License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on April 30, 2026, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Podiatric Medical Board (Board), under the authority of the following laws. All section references are to the Business and Professions Code (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.

5. Section 2460.1 of the Code states:

Protection of the public shall be the highest priority for the California Board of Podiatric Medicine in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

STATUTORY PROVISIONS

6. 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 COST RECOVERY

25 7. Section 2497.5 of the Code states:

26 (a) The board may request the administrative law judge, under his or her
27 proposed decision in resolution of a disciplinary proceeding before the board, to
28 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
decision and in making its own decision finds grounds for increasing the costs to be
assessed, not to exceed the actual and reasonable costs of the investigation and
prosecution of the case.

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

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

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

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

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

12 FACTUAL ALLEGATIONS

13 8. On or about December 11, 2018, Patient A,¹ a then sixty-three-year-old woman,
14 presented to Respondent complaining of a painful bunion on her left foot. Patient A indicated
15 that she previously tried conservative treatments, such as padding and over-the-counter inserts,
16 but they only helped minimally. Patient A also complained of a painful toenail on her right big
17 toe. Patient A specified that the toenail was discolored, disfigured, and painful. Patient A told
18 Respondent that she wanted surgical correction of her bunion and the toenail removed.

19 9. Respondent examined Patient A and ordered x-rays. Respondent diagnosed Patient A
20 with a tailor's bunion² on the left foot, onychocryptosis³ and onychomycosis⁴ of the right hallux
21 (big toe), and an enlarged bone in the toe. Respondent planned to remove Patient A's toenail,
22 with possible chemical destruction of the right big toe.

23 10. On or about January 28, 2019, Patient A again presented to Respondent complaining
24 that she could no longer stand and walk due to the pain from the tailor's bunion. Respondent
25 discussed conservative treatments with Patient A, but she reiterated her desire for surgical
26 correction of the tailor's bunion. Patient A stated that she was not experiencing any toenail pain
27 so the toenail removal procedure was deferred. Respondent again ordered x-rays of the foot and
28 instructed Patient A to bring in a copy of the x-ray results to their next appointment.

¹ The patient is identified as "Patient A" to protect her privacy.

² A tailor's bunion is a bony bump that forms at the base of the pinkie toe where it meets the foot.

³ Onychocryptosis, also known as an ingrown nail, is a condition in which the corner or side of a toenail grows into the flesh. This condition usually affects the big toe.

⁴ Onychomycosis, also known as nail fungus, is a common infection of the nail that causes changes in appearance of the nail, and can cause pain and/or a foul odor.

1 11. On or about February 25, 2019, Patient A presented to Respondent complaining of
2 pain from the tailor's bunion and a blister that recently popped on her left foot. Respondent
3 examined Patient A's foot and noted the bunion and blister. Patient A brought the x-ray report to
4 Respondent during this appointment but failed to bring the actual x-ray. Respondent instructed
5 Patient A to use Neosporin cream and bandage the blister, and to bring the x-rays to her next
6 appointment.

7 12. On or about March 11, 2019, Patient A returned to Respondent complaining about
8 pain from the wound on her left foot and the bunion. Respondent examined the left foot and
9 found a 2x2 centimeter (cm) ulcer on the fifth metatarsal. Respondent discussed wound care with
10 Patient A and prescribed Silvadene cream.⁵ Respondent recommended completion of the
11 bunionectionomy after the wound healed.

12 13. On or about April 8, 2019, Patient A presented to Respondent with the same
13 complaints. During this visit, Respondent debrided the wound on Patient A's left foot and
14 discussed conservative treatments with her.

15 14. On or about May 7, 2019, Patient A presented to Respondent. Respondent reviewed
16 Patient A's x-rays and noted there were no signs of fractures, but he did note there were small
17 bone spurs and an enlarged bone at the fifth metatarsal bone. During this visit, Patient A's
18 bunionectionomy of the tailor's bunion was scheduled for September 6, 2019.

19 15. Patient A presented to Respondent additional times before the scheduled surgery. On
20 or about September 6, 2019, Patient A presented to Respondent for a tailor bunionectionomy and
21 removal of granuloma,⁶ of the left foot. Respondent noted that Patient A tolerated the procedure
22 well and without any complication.

23 16. On or about September 9, 2019, Patient A presented to Respondent for her first
24 postoperative appointment. Respondent inspected the wound and reviewed x-rays of the foot.
25 Respondent found that there were no signs of infection or inflammation, and no signs of fracture.

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27 ⁵ Silvadene cream is a topical antibiotic cream used to treat or prevent serious skin
infections.

28 ⁶ A granuloma is a tiny cluster of white blood cells and other tissue that form in response
to infections, inflammation, irritants, or foreign objects.

1 17. Patient A presented for additional follow-up appointments. During these visits, it was
2 found that there was dehiscence of the wound at the surgical site. Antibiotic cream was applied,
3 oral antibiotics were prescribed, and home health methods were discussed. Respondent evaluated
4 and monitored the progress of the wound during each visit.

5 18. A pathology report was found in Patient A's medical records. According to the
6 pathology report, Quest Diagnostics received Patient A's specimen on or about September 7,
7 2019, seemingly following her bunionectomy. The pathology report was completed on
8 September 12, 2019, and faxed to Respondent the same day. The report revealed a melanoma,
9 invasive to 8 millimeters in depth, Clark Level IV.⁷ There was no indication that this pathology
10 report was discussed with Respondent.

11 19. On or about November 9, 2019, Patient A was again seen for a postoperative follow-
12 up appointment. Patient A indicated that her wound was improving and she was experiencing
13 minimal to moderate pain. Respondent found that the wound was 0.1 x 0.1 cm without signs of
14 infection. The wound was debrided, wound care was advised, and Patient A was discharged from
15 Respondent's care.

16 20. Following her discharge from Respondent's care, Patient A had numerous visits to
17 the emergency department and additional hospital stays to address numerous conditions and
18 maladies.

19 21. On or about June 11, 2020, Patient A was admitted to UCI Health in Orange,
20 California, due to pulmonary distress. After a full work-up, it was found that Patient A's lymph
21 node in the left upper thigh area showed metastatic melanoma.⁸ Patient A was diagnosed with
22 metastatic melanoma and underwent rounds of cancer treatment through July 2022.

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25 ⁷ The Clark Level is a staging system that describes the depth of melanoma as it grows in
26 the skin. Level IV typically means the melanoma has invaded the reticular dermis layer. The
27 reticular dermis has blood vessels and connective tissue that supports the skin. Hair follicles and
28 sweat glands, among other structures, are found in the reticular dermis.

⁸ Metastatic melanoma is a disease that occurs when the cancerous cells from the original
tumor get loose and spread by traveling through the lymph or blood circulation, and start a new
tumor elsewhere.

CAUSE FOR DISCIPLINE

(Gross Negligence)

22. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he was grossly negligent in his care and treatment of Patient A. The circumstances are as follows:

23. Complainant hereby re-alleges the facts set forth in paragraphs 8 through 21, above, as though fully set forth.

24. The standard of care when treating a tailor's bunion requires a practitioner to gather medical history, perform a physical examination, order appropriate imaging studies, obtain proper informed consent, perform the appropriate surgery, and administer follow-up treatment as required.

25. The standard of care when treating a wound excision after performing a biopsy requires a practitioner to follow up on the results of the biopsy, discuss the results with the patient, and provide the necessary treatment.

26. Respondent evaluated Patient A and provided the necessary preoperative care. He also performed the procedures properly. However, Respondent failed to properly review the pathology report and discuss with Patient A the melanoma diagnosis contained in the report. As a result, Respondent failed to refer Patient A for additional treatment. During his interview with the Board, Respondent acknowledged his oversight. Respondent's actions and inactions constitute an extreme departure from the standard of care.

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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 Doctor of Podiatric Medicine Number E 4188, issued to Respondent Roger Y. Tsutsumi, D.P.M.;

2. Ordering Respondent Roger Y. Tsutsumi, 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 if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as deemed necessary and proper.

DATED: JAN 23 2025



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

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