BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
MICHAEL ALAN STEIN, D.P.M.	)	File No. 500-2015-000211
	)	
Doctor of Podiatric Medicine License No. E 2905	)	
	)	
Respondent	)	
	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by C. Keith Greer, Esq., attorney for MICHAEL ALAN STEIN, D.P.M., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Board of Podiatric Medicine, is hereby denied.

This Decision remains effective at 5:00 p.m. on **January 29, 2018**.

IT IS SO ORDERED: January 29, 2018.

BOARD OF PODIATRIC MEDICINE

MICHAEL A. ZAPF, D.P.M., President

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
	)	File No. 500-2015-000211
MICHAEL ALAN STEIN, D.P.M.	)	
	)	
Doctor of Podiatric Medicine License No. E 2905	)	**ORDER GRANTING STAY**
	)	
	)	(Gov't Code Section 11521)
	)	
Respondent	)	

ORDER GRANTING EXTENSION OF STAY

The Respondent MICHAEL ALAN STEIN, D.P.M., having recently filed a Petition for Reconsideration, the stay of execution heretofore granted in this matter is hereby extended pursuant to Government Code section 11521 (a), until **January 29, 2018**.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: 1/12/2018

Brian Naslund
Executive Director
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
MICHAEL ALAN STEIN, D.P.M.	)	File No. 500-2015-000211
	)	
Doctor of Podiatric Medicine License No. E 2905	)	
	)	
	)	
Respondent.	)	

ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERRORS IN "CAPTION" PORTION OF ORDER GRANTING STAY

On its own motion, the Board of Podiatric Medicine (hereafter "board") finds that there are clerical errors in the "caption" portion of the Order Granting Stay in the above-entitled matter and that such clerical errors should be corrected.

IT IS HEREBY ORDERED that the caption contained on the Order Granting Stay Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the Order Granting Stay to read:

- Doctor of Podiatric Medicine License No. E 2905
- File No. 500-2015-000211

Dated: January 5, 2018

BRIAN NASLUND
Executive Officer
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	MBC No. 500-2015-000211
MICHAEL ALAN STEIN, D.P.M.	)	
	)	
Physician's and Surgeon's Certificate No. E 2905	)	**ORDER GRANTING STAY**
	)	
	)	(Government Code Section 11521)
	)	
Respondent	)	

C. Keith Greer, Esq. on behalf of respondent, MICHAEL ALAN STEIN, D.P.M., has filed a Request for Stay of execution of the Decision in this matter with an effective date of December 29, 2017, at 5:00 p.m.

Execution is stayed until January 19, 2018.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: December 22, 2017

Brian Naslund
Executive Director
Board of Podiatric Medicine

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
MICHAEL ALAN STEIN, D.P.M.	)	**File No. 500-2015-000211**
Doctor of Podiatric Medicine License No. E 2905	)	
Petitioner.	)	

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on December 29, 2017.

DATED: December 1, 2017.

BOARD OF PODIATRIC MEDICINE

MICHAEL A. ZAPF D.P.M., President

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MICHAEL ALAN STEIN, D.P.M., Podiatrist License No. E2905 Respondent.	Case No. 500-2015-000211 OAH No. 2017050284

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 9 and 10, 2017, in Oakland, California.

Deputy Attorney General Carolyne Evans represented complainant Brian K. Naslund, Executive Officer of the Board of Podiatric Medicine.

Attorney C. Keith Greer represented respondent Michael Alan Stein, D.P.M. Dr. Stein attended the hearing.

The matter was submitted on August 10, 2017.

FACTUAL FINDINGS

1. Respondent Michael Alan Stein received a Doctor of Podiatric Medicine degree from the California College of Podiatric Medicine (now the California School of Podiatric Medicine, Samuel Merritt University) in 1981. The Board licensed respondent to practice podiatry in California (Podiatrist License No. E2905) on December 10, 1981. This active license will expire January 31, 2019, unless renewed.

2. On February 8, 2017, acting in his official capacity as Executive Officer of the Board of Podiatric Medicine, complainant Brian K. Naslund filed an accusation against respondent. The accusation seeks revocation of respondent's podiatrist license, based on allegations that respondent practiced outside the scope of his licensure and that he behaved unprofessionally in a variety of settings by making video recordings of women without their knowledge or consent. Respondent requested a hearing.

Practice Outside Scope of Podiatrist License

3. Respondent conducts a general podiatry practice at several clinic locations in the San Francisco Bay Area. Since 2011, his practice has included laser treatments for fungal infections (onychomycosis) in toenails.

4. Beginning in 2013, respondent contracted with a medical doctor (Sylvia Singer, M.D.) to confirm fingernail onychomycosis diagnoses. Respondent's arrangement with Dr. Singer was to send her photographs of a patient's diseased fingernails by email or text message, and to receive her diagnosis and treatment plan by return message. In addition to the photographs, the correspondence included the patients' identifying information. Respondent and Dr. Singer did not use any form of encryption for this correspondence.

5. "Ankle certified" podiatrists may under some circumstances treat body parts other than feet and ankles under medical doctors' supervision. Based on correspondence one of his clinic staff members had exchanged with one or more Board staff members, respondent believed that his podiatrist license permitted him to administer laser treatment for onychomycosis in fingernails as long as he consulted with a medical doctor to confirm this diagnosis. This belief was incorrect, because respondent is not ankle certified.

6. Respondent learned in mid-2016 that Board staff members did not believe that his license qualified him to perform laser treatment on fingernails, regardless of any arrangement with Dr. Singer. For this reason, respondent stopped offering this service and has no plans to resume it.

Video Recordings

7. In 2015, the Board received a complaint[1] alleging in part that respondent had made and saved video recordings of patients and non-patients for "lewd" purposes. Electronic copies of multiple short videos accompanied this complaint.

COMMON CHARACTERISTICS OF THE RECORDINGS AT ISSUE

8. Respondent used the camera on a cellphone to make each of the video recordings complainant introduced into evidence in this matter. He made each recording deliberately, taking steps not just to conceal his recording activity from people around him but to mislead them into thinking his attention was elsewhere. Respondent rarely if ever looked through the camera's viewfinder to compose the shots, and none of the recordings suggests that any of the people visible in any recording realized that respondent was recording them.

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[1] Respondent described the complainant as an "ex-girlfriend" with whom he formerly had shared a home.

9. Because respondent took the videos surreptitiously, without using the camera's viewfinder, the field of view in many videos moves around somewhat. All of the videos focus eventually, though often intermittently, on women's torsos.

10. Respondent had saved the video recordings that were in evidence to a computer in his home. The evidence did not establish when he saved them; what method he used to transfer recordings from the camera to the computer; whether he edited the videos before or after saving them; or whether he took additional videos that he did not save.

11. The video recordings in evidence in this matter are organized electronically into groups bearing dates in 2010 and 2011. No evidence established when respondent actually made the recordings.

12. Despite their subjects' unremarkable appearance and behavior (as described more fully in Findings 13, 14, 15, 18 and 19), the videos leave no doubt that respondent chose to record these women because he found them sexually attractive.

RECORDINGS OF NON-PATIENTS

13. All but six of the videos the Board received show women in busy public places, such as stores, airports, and restaurants. No subject is wearing unconventional clothing; none is doing anything extraordinary; and none is performing. The videos do not show that any of the women in them have attracted unusual attention from anyone nearby other than respondent.

14. Several of the videos focus on women's breasts, in shirts that fit closely or that have necklines exposing the collarbones and chest. Others focus on women's backsides, in close-fitting pants. Although the women's clothing shows their figures, none of the videos in evidence shows any portion of a subject's body that she reasonably would have expected people around her in public not to see.

15. Respondent took and saved at least two video recordings of a staff member in his clinic. They show her from behind while she stands at a counter. Respondent began one of the recordings while talking with the staff member, and continued while either talking or pretending to talk on the telephone. The evidence did not establish this woman's identity, or whether she ever has learned that respondent recorded her in this manner.

16. Every woman respondent recorded in public was or should have been aware that many strangers could see her, and that some of those strangers might like her appearance. Likewise, respondent's clinic staff member knew or should have known that respondent sometimes saw her in the workplace without making her aware that he did. Nevertheless, no evidence established that any woman in respondent's recordings had agreed that respondent could record her, in public or in her workplace, to look at her later in private.

RECORDINGS OF PATIENTS

17. Four of the videos show patients in examination chairs at one of respondent's clinics.

18. Two of these four videos show the same female patient in an examination chair, during the same appointment. The videos show no one in the examination room aside from the patient and respondent. They converse about professional matters while she is seated and respondent is standing beside her. Although the videos do not show where respondent himself was looking when he recorded them, one of the videos allows the viewer to look down the woman's shirt.

19. The other two patient videos show a woman in the examination chair with another woman standing beside the patient. While respondent examines the patient's feet and speaks to the patient about them, his camera frames the companion's torso.

20. The evidence did not establish these women's identities, or whether they ever learned that respondent had recorded them in this manner.

21. Respondent estimated that he had recorded patients on 10 occasions.

22. Some or all of respondent's patients authorized respondent to make and keep photographs or video recordings relating to their podiatric treatment. No evidence established that any of respondent's patients authorized respondent to make and keep photographs or video recordings showcasing their or their companions' figures, or looking down their shirts.

RESPONDENT'S TESTIMONY REGARDING THE RECORDINGS

23. Respondent appeared twice for interviews with Board investigators, once in April 2016 and again in June 2016. Respondent swore under penalty of perjury in each interview to give truthful information to the investigators,[2] and was accompanied at each interview by counsel.

24. At the April 2016 interview, respondent firmly denied ever intentionally having photographed or made video recordings of patients, clinic staff members, or people in public without their consent. This denial was false.

25. Respondent began the June 2016 interview by confessing that he had lied to the investigators in April, and that in fact he had taken photographs and made video recordings of patients, clinic staff members, and people in public. He said that he had lied

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[2] Board investigative staff members discussed the fingernail treatment arrangement with respondent and his counsel at both interviews. Respondent's discussion of this topic was straightforward and credible at those interviews, and at the hearing.

because he was "embarrassed and frightened." Respondent expressed great remorse, both for having made the recordings and for having lied to the investigators about them.

26. Respondent also told the Board's investigators in June 2016 that he had "ended this years ago of my own accord." When pressed, he estimated that he had stopped recording people between two and five years earlier. He stated vaguely that he had realized that making covert recordings was "wrong," and that he had decided after this realization that he should no longer do so. He identified no event that had prompted him to change his behavior, and denied having sought any professional help for it.

27. Respondent's testimony at the hearing was very similar to his testimony to the investigators in June 2016. He expressed remorse strongly and repeatedly. He described his conduct in recording the videos as an "aberration," but offered no evidence that he had examined his reasons for having engaged in that conduct. Although respondent stated that he had stopped making secret recordings, he was unable or unwilling to explain exactly when or why he had stopped or how he maintained his resolve.

28. At the June 2016 interview and at the hearing, respondent limited his confessions of responsibility and his statements of remorse to the video recordings the Board had received. He testified that he was not aware of other covert recordings, but did not directly deny having made any others.

29. Overall, respondent's testimony about the video recordings was evasive, incomplete, and not credible. It did not establish that respondent understands why he made any nonconsensual recordings of sexually attractive women at all, let alone why he made such videos during the course of professional treatment. Furthermore, respondent's testimony did not establish that he has received any counseling or put any measures in place to help him reduce or resist the desire to engage in this or other privacy-invading conduct in the future.

Standard of Care

30. Complainant offered testimony by David Mednick, D.P.M., regarding the standard of care that applies to respondent in treating his patients. Dr. Mednick has approximately 30 years' experience as a podiatrist in California. To develop his opinions, Dr. Mednick reviewed the transcripts of respondent's two interviews with the Board and certain of respondent's patient records. He later also reviewed most or all of the videos at issue in this matter.

31. Dr. Mednick testified that podiatrists must obtain their patients' consent to take photographs or video recordings of them, and must maintain any such images in a confidential manner that does not risk their identifiable disclosure to others. He testified as well that even with consent, podiatrists should not take and maintain images of their patients that bear no relationship to podiatric medical treatment.

32. According to Dr. Mednick, respondent's practice of sending photographs of his patients' fingernails to Dr. Singer in an unencrypted format constituted repeated simple departures from the standard of care, because this practice risked exposing those photographs along with the patients' identifying information beyond the doctor-patient relationship. This opinion was uncontroverted and persuasive.

33. Dr. Mednick also opined that respondent's consulting arrangement with Dr. Singer caused him to commit repeated simple departures from the standard of care, because Dr. Singer's diagnostic assistance did not bring respondent's patients' fingernail onychomycosis within the scope of respondent's licensed treatment authority. This opinion also was uncontroverted and persuasive.

34. Dr. Mednick opined that respondent's nonconsensual video recordings of his patients were extreme departures from the standard of care, because they violated respondent's patients' trust and reflected respondent's sexual interests. He opined as well that respondent's practice of saving the videos for later viewing was an extreme departure from the standard of care because it violated the patients' confidentiality. These opinions were persuasive.

35. Finally, Dr. Mednick opined that the video recordings respondent made of his staff member and in public also constituted extreme departures from the standard of podiatric medical care. This opinion was not persuasive, because respondent did not make the recordings in the course of rendering or even purporting to render podiatric medical care.

Psychological Evaluation

36. Before his June 2016 interview with Board investigators, respondent consulted David Pingitore, Ph.D., for a psychological evaluation. Dr. Pingitore is an experienced clinical psychologist whose practice includes forensic psychological assessments and professional fitness evaluations.

37. Dr. Pingitore administered a battery of written psychological tests to respondent and interviewed him, and prepared a brief report. Dr. Pingitore concluded that respondent did not "present with any symptoms regarding sexual pathology, impulse control behavior, or a mental disorder," and that he is "entirely competent to continue to practice medicine."

38. Dr. Pingitore did not view any of the videos at issue in this matter before evaluating respondent. Instead, he relied solely on respondent's description of them, paraphrasing that description in his report as "unwarranted pictures and video of both patients and the general public." At the hearing, after having seen the videos, Dr. Pingitore further described them as reflecting a "documentarian" impulse.

39. Respondent's videos were not simply "unwarranted"; they were deceitful, as described in Findings 8, 16, and 22, above. Dr. Pingitore made no effort, either in his written

report or in his testimony, to explain why respondent chose to record women, including patients in his examination rooms, by deceit and without their consent.

40. Moreover, these nonconsensual videos were not simply "documentarian"; they were sexually motivated. Dr. Pingitore made no effort, either in his written report or in his testimony, to identify or to analyze factors that may have caused respondent to act on sexual interests while treating patients.

41. As he has told the Board, respondent told Dr. Pingitore that he had made no further surreptitious recordings since 2011 and would never do so again. Rather than using his psychological expertise to evaluate the credibility of this assertion, Dr. Pingitore simply accepted it at face value. Overall, Dr. Pingitore's opinion that such behavior is unlikely to recur is not persuasive.

Character Witnesses

42. Bruce Dobbs, D.P.M., and Joseph Michael Cafiero, D.P.M., testified regarding respondent's professional skills. Both Dr. Dobbs and Dr. Cafiero have known respondent for nearly all of respondent's professional life, and both have great respect for respondent's podiatric medical skills.

43. Dr. Dobbs had seen examples of the videos at issue in this matter before testifying, and described them as "innocuous." He did not address either the breaches of patient trust involved in the examination room videos, or the apparent sexual motivation of any of the videos. He stated that the videos would not change his opinion of respondent's skills, and that he would continue to cooperate professionally with respondent if respondent maintains his podiatrist license.

44. Dr. Cafiero also had seen examples of the videos at issue in this matter, and he agreed that the examination room videos were "inappropriate." Because he believes respondent's assurances that respondent has stopped making such recordings, however, Dr. Cafiero has confidence in respondent's ability to continue rendering high-quality podiatric medical services.

45. Respondent's lifelong friend Dennis Shapses testified credibly that respondent has been a loyal and supportive friend. Shapses said that he had seen examples of the videos at issue in this matter and considered them "dumb," and he urged the Board to accept respondent's assurances that such behavior would not recur.

46. Barbara Fahrney, who has provided financial and administrative services to respondent since 2004, testified that she considers him absolutely trustworthy. She views the video recordings of respondent's staff member and of his patients as unfortunate errors in judgment, but believes that respondent will not repeat these errors.

47. Marianna Bechtold has known respondent for nearly 30 years, since he moved to the neighborhood in which she and her late husband lived. He has been compassionate and generous to her; they house- and pet-sit for one another and have celebrated holidays together. Although she considers respondent's recordings to have been mistakes, she acknowledged that she would not go back to a health care provider if she learned that the provider had recorded her in a manner similar to the manner in which respondent recorded his patients.

Costs

48. The Board has incurred $26,012.25 in costs for legal services provided to complainant by the Department of Justice in this matter. Costs for the investigation phase of this matter total $15,559.75; costs for preparing and litigating the accusation total $10,452.50. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2).

49. Complainant also provided a cost certification stating that Board investigative staff members had incurred costs between June 2015 and December 2016 totaling $7,440 for investigation of the complaint about respondent. This certification complies with California Code of Regulations, title 1, section 1042, subdivision (b)(1).

50. The Board's investigation in this matter resulted in an accusation regarding only some of the conduct the Board had investigated. In the absence of further evidence, assigning half of the investigative costs to the aspects of the complaint that the investigation supported and half to the aspects that the investigation did not support is reasonable. Complainant's reasonable investigation costs regarding the matters addressed in this hearing are $11,500.

51. Complainant's costs to prepare and litigate the accusation in this matter, $10,452.50, are reasonable.

52. Finally, complainant seeks reimbursement of $2,875 for costs incurred for physical and mental health evaluations. The documentation supporting these costs does not satisfy California Code of Regulations, title 1, section 1042, subdivision (b)(1), and is inadequate evidence of these costs.

LEGAL CONCLUSIONS

1. The Board may suspend or revoke respondent's podiatrist license only if clear and convincing evidence establishes the facts supporting discipline. The factual findings above reflect this standard.

2. Under Business and Professions Code sections 2222 and 2234, the Board may discipline a podiatrist's license for "[g]ross negligence" (section 2234, subdivision (b)) or for "[r]epeated negligent acts" (section 2234, subdivision (c)). In this context, "negligence" constitutes a departure from the minimum professionally accepted standard of care, and "gross negligence" connotes an extreme departure.

3. Under Business and Professions Code section 2263, "willful, unauthorized violation of professional confidence constitutes unprofessional conduct," for which the Board may discipline a podiatrist's license under Business and Professions Code sections 2222 and 2234.

First Cause for Discipline: Patient Videos

4. The matters stated in Findings 8 through 12, 17 through 22, and 34 establish cause for discipline against respondent under Business and Professions Code section 2234, subdivision (b).

5. The matters stated in Findings 8 through 12, 17 through 22, and 34 establish cause for discipline against respondent under Business and Professions Code section 2234, subdivision (c).

6. The matters stated in Findings 8 through 12 and 17 through 22 establish cause for discipline against respondent under Business and Professions Code sections 2234 and 2263.

Second Cause for Discipline: Non-Patient Videos

7. The matters stated in Findings 8 through 16 and 35 do not establish cause for discipline against respondent under Business and Professions Code section 2234, subdivision (b) or (c).

Third Cause for Discipline: Photo Transmissions to Consulting Physician

8. The matters stated in Findings 4 and 32 establish cause for discipline against respondent under Business and Professions Code section 2234, subdivision (c).

Fourth Cause for Discipline: Practice Outside Scope of Licensure

9. The matters stated in Findings 4, 5, and 33 establish cause for discipline against respondent under Business and Professions Code section 2234, subdivision (c).

Disciplinary Considerations

10. The Board's "Manual of Disciplinary Guidelines with Model Disciplinary Orders" (see Cal. Code Regs., tit. 16, § 1399.710) authorizes, but does not require,

revocation of a podiatrist's license for acts constituting gross negligence or repeated simple negligence. Relying heavily on respondent's testimony that he no longer made secret video recordings, and that he knew of none postdating 2011, respondent argued for stayed revocation with a term of probation. As stated in Findings 26, 27, 28, 29, and 41, however, the evidence on this issue was not conclusive. The evidence did not establish that respondent had continued his recording practices after 2011, but neither did it establish definitively that he had discontinued them.

11. Despite Legal Conclusion 7, respondent's non-patient videos are relevant to the Board's disciplinary determination in this matter, because they demonstrate that respondent made such recordings in many settings. As stated in Findings 23 through 29 and 36 through 41, however, respondent has not been candid with the Board, with himself, or with the psychologist he consulted in 2016 regarding these matters.

12. Respondent showed a lack of insight into his own behavior, as well as a lack of interest in gaining any such insight. This lack of insight, coupled with the fact that deception and concealment were essential features of his recording behavior, make respondent a poor candidate for probation. Because respondent used his podiatrist license to invade patients' privacy for his own personal purposes, the public interest in this matter favors revocation of respondent's license.

Costs

13. A licensee found to have committed a violation of the statutes and regulations governing podiatric medical practice may be required to pay the Board the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 2497.5.) As set forth in Findings 50, 51, and 52, the total reasonable costs proven in this matter were $21,952.50.

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that the board does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.* at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

15. All these matters have been considered. In this matter, the evidence at hearing substantiated complainant's allegations, despite respondent's denial. An order directing respondent to reimburse the Board $21,952.50 for its investigation and prosecution costs is reasonable.

ORDER

1. Podiatrist License No. E2905, issued to respondent Michael Alan Stein, is revoked.

2. Within 90 calendar days following the effective date of this order, or within such other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of $21,952.50 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent of his obligation to reimburse the Board for these costs.

DATED: August 22, 2017

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 8 2017
BY Robyn Fitzwater ANALYST

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MICHAEL ALAN STEIN, D.P.M.** **1300 Bancroft Ave, #103** **San Leandro, CA 94577** **Podiatrist License No. E 2905** Respondent.	Case No. 500-2015-000211 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 10, 1981, the Board of Podiatric Medicine issued Podiatrist License Number E 2905 to MICHAEL ALAN STEIN, D.P.M. (Respondent). The Podiatrist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

JURISDICTION

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

4. Section 2472 of the Code states, in pertinent part:

"(a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine.

"(b) As used in this chapter, "podiatric medicine" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.

". . . ."

5. Section 2497, subdivision (a), of the Code states that "[t]he 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."

6. Section 2222 of the Code provides, in pertinent part, that "[a]ny acts of unprofessional conduct or other violations proscribed by [the Medical Practice Act] are applicable to licensed doctors of podiatric medicine" and that the Board may "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 [the Medical Practice Act] and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code."

7. Section 2234 of the Code, a part of Article 12 of the Medical Practice Act, states, in relevant part:

"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."

". . . ."

8. Section 2263 of the Code, a part of Article 12 of the Medical Practice Act, provides that "[t]he willful, unauthorized violation of professional confidence constitutes unprofessional conduct."

9. 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 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.

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

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

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

FACTS

10. At all times relevant to this matter, Respondent was licensed and practicing podiatric medicine in California.

11. Respondent has treated the fingernails of a number of his patients by laser for onychomycosis of the nails. After diagnosing the condition, he photographed the patients' nails and sent the photos, labeled with the patients' names, to a medical doctor to confirm his diagnosis before providing treatment. The medical doctor did not oversee or supervise the treatment and only very rarely saw the patients personally. Respondent paid the medical doctor a monthly stipend for her services. Respondent regularly sent these photographs to the medical doctor from his cell phone without encryption and without patient consent to having the photos sent without encryption.

12. For a period of at least two to five years, Respondent secretly video recorded female office staff, patients, and members of the general public without their knowledge or consent for his private viewing. The videos concentrated on the chest and buttock areas of clothed women.

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence, Repeated Negligent Acts, Violation of Professional Confidence)

13. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and (c) (repeated negligent acts), and 2263 (violation of professional confidence) of the Code in that, as described above, he secretly took videos of patients and various body parts of patients with his cell phone without their consent for his private viewing.

SECOND CAUSE FOR DISCIPLINE
(Gross Negligence, Repeated Negligent Acts)

14. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and (c) (repeated negligent acts), of the Code in that, as described above, he secretly took videos of his female staff and of female members of the general public without their knowledge and consent for his private viewing.

THIRD CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

15. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (c) (repeated negligent acts), of the Code in that, as described above, he transmitted unencrypted patient information and photos to his retained medical doctor using his cell phone and e-mail without patient consent to transmit the information without encryption.

FOURTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

16. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (c) (repeated negligent acts), of the Code in that, as described above, he provided laser treatments for onychomycosis on patients' fingernails.

PRAYER

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

1. Revoking or suspending Podiatrist License Number E 2905, issued to MICHAEL ALAN STEIN, D.P.M.;

2. Ordering Michael A. Stein, DPM to pay the Board of Podiatric Medicine 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, to pay the Board of Podiatric Medicine the costs of probation monitoring; and,

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

DATED: February 8, 2017

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

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