

Enforcement Program

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Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

March 2, 2020

Pieter Michiel Lagaay, D.P.M. 1820 Joseph Drive Moraga, CA 94556-2711

Dear Dr. Lagaay:

We received the Request for Stay pertaining to Pieter Michiel Lagaay, D.P.M. on January 13, 2020. Because a Petition for Reconsideration was not received by 5:00 p.m. on February 28, 2020, the disciplinary decision became effective February 28, 2020 at 5:00 p.m. by operation of law, at which time the Medical Board of California lost jurisdiction over this case. Therefore, we are returning the Request for Stay to you.

If you have any questions, you can call me at (916) 576-3216. You can also contact Bethany DeAngelis at (916) 263-4324.

Sincerely,

Anna Logan

Staff Services Analyst

(916) 576-3216

Enclosure

CC:

Brian Naslund, Executive Officer, Board of Podiatric Medicine

Mark Scarlett, Supervising Investigator

Robert F. Hahn, Esq.

Lynne K. Dombrowski, Deputy Attorney General

Ruth S. Astle, Administrative Law Judge

MBC Case No.: 500-2015-000297

BEFORE THE MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:)
Pieter Michiel Lagaay, D.P.M.) MBC No. 500-2015-000297
Physician's and Surgeon's Certificate No. E4684	ORDER GRANTING STAY
Columento, Lacoa	(Government Code Section 11521)
Respondent)

Robert F. Hahn, Esq., on behalf of respondent, Pieter Michiel Lagaay, D.P.M, has filed a Request for Stay of execution of the Decision in this matter with an effective date of January 31, 2020, at 5:00 p.m..

Execution is stayed until February 28, 2020, at 5:00 p.m.

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

DATED: January 17, 2020

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:)	Case No: 500-2015-000297
PIETER MICHIEL LAGAAY, D.P.M.)	
Doctor of Podiatric Medicine)	
Certificate No. E 4684)	
Respondent.	<u>´</u>	

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 January 31, 2020

DATED January 2, 2020

BOARD OF PODIATRIC MEDICINE

Judith Manzi, D.P.M., President

BEFORE THE PODIATRIC MEDICAL BOARD STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PIETER MICHIEL LAGAAY, D.P.M., Respondent,

Doctor of Podiatric Medicine Certificate No. 4684.

Case No. 500-2015-000297

OAH No. 2019060842

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on October 22, 23, and 24, 2019, in Oakland, California.

Lynne K. Dombrowski, Deputy Attorney General, represented the complainant.

Robert Hahn, Attorney at Law, represented the respondent, who was present.

Submission of the matter was deferred to November 1, 2019, for receipt of a written amended accusation and a written argument on the cost of prosecution. The written first amended accusation was received October 31, 2019, marked as Exhibit 11, and entered into the record as a jurisdictional document. Respondent's objection to cost recovery was received October 31, 2019, marked as Exhibit C, and considered. Complainant's response to the objection to cost recovery was received November 5,

2019, marked for the record as Exhibit 12, and considered. Respondent declined to file a response to the first amended accusation. The record closed on November 5, 2019, and the matter was submitted for decision on that date.

FACTUAL FINDINGS

Jurisdictional Matters

- 1. Brian Naslund (Complainant) made this accusation in his official capacity as the Executive Officer of the Podiatric Medical Board (Board), Department of Consumer Affairs.
- 2. On July 24, 2006, the Board issued Doctor of Podiatric Medicine
 Certificate Number 4684 to Pieter Michiel Lagaay, D.P.M. (respondent). The Certificate
 was in full force and effect at all times relevant to this matter and will expire on June
 30, 2020, unless renewed.

Cause for Discipline

- 3. In late October 2015, respondent was interviewed more than once during an investigation by his employer, The Permanente Medical Group, Inc. (TPMG), Diablo Service Area, of staff allegations that he was engaging in sexual activity at work with patients, staff and the general public.
- 4. During the interviews with TPMG staff, respondent admitted to having had sexual encounters with three patients, while they were under his direct care. His sexual encounters with two of his patients took place on Kaiser Permanente (KP) premises. He had a sexual encounter with one patient at her private residence on October 18, 2015, the day before she had surgery performed by respondent.

- 5. In the case of the patient that respondent had a sexual encounter with the night before her surgery, the initial contact was when the patient texted respondent with questions concerning her pending surgery. He responded to her by text to her personal phone number. He arranged to meet her that evening at a restaurant. He then went back to her residence for the purposes of sex. He performed surgery on the patient the next morning.
- 6. Within the last four years, respondent had multiple sexual encounters on KP premises with at least nine employees (non-physicians), which occurred both during and after work hours. Within the last two years, respondent had multiple sexual encounters with members of the general public on KP premises, in his clinic office and in a call room. He initiated these encounters by email or on social media.
- 7. Respondent used employer-issued equipment to record, receive, and distribute, via text messaging and email, sexually explicit photos and videos of himself and women with whom he had sex, including intimate body parts.
- 8. On November 3, 2015, the Board received a section 805 reporting form from TPMG in which it was reported that, effective October 27, 2015, respondent resigned his employment after being notified of an investigation into allegations of inappropriate conduct.
- 9. On December 11, 2017, during an interview with the Board investigator, respondent admitted to sexual encounters with employees, the general public, and one patient who was under his care at the time of the sexual encounter.
- 10. On August 4, 2018, respondent voluntarily submitted to a psychiatric evaluation by a Board-approved and board-certified psychiatrist. During the evaluation, respondent admitted to having sexual encounters at TPMG with co-

workers, patients, and other women, who he met online and in the community.

Respondent recalled sexual relationships with two patients, who he had treated.

Respondent was not candid about his method of meeting and pursuing these sexual encounters.

- 11. The Board's psychiatrist evaluator concluded that the most fitting terminology/psychiatric diagnosis for respondent's increased and uncontrollable sexual urges and behaviors is "hypersexual disorder," which is not a diagnosis included in the current Diagnostic and Statistical Manual for Mental Disorders, 5th edition (DSM-5). The psychiatrist evaluator concluded, based essentially on what respondent told him, that respondent's condition is in sustained remission and respondent is currently able to practice podiatric medicine safely and without restrictions or conditions.
- 12. It was established by clear and convincing evidence through the expert testimony of Jack L. Bois (Board expert), D.P.M., that respondent's sexual encounters with each of the three patients constitutes an extreme departure from the standards of practice, unprofessional conduct, sexual misconduct, and gross negligence.
- 13. Respondent's acts involving sexual encounters and sexually explicit communications while on duty at his office or other work venues, constitutes general unprofessional conduct.
- 14. It was further established by clear and convincing evidence through the testimony of the Board's expert that respondent's sexual encounters with 11 employees/co-workers constitutes unprofessional conduct. During the investigation by TPMG/KP, respondent admitted to having sexual encounters with nine employees/co-workers on KP premises during the workday and with two other employee/co-workers exclusively off KP premises. All of the 11 identified employees/co-workers, with whom

respondent had sexual encounters, worked in positions that were subordinate to respondent's position. None of the employees/coworkers were physicians.

Respondent's sexual encounters were initiated with these employee/coworkers during their ongoing business relationship. These encounters did not begin as social encounters and progress to sexual encounters. Respondent pursued a sexual relationship during his work relationship.

- 15. Each sexual encounter respondent had with the 11employees/coworkers constitutes general unprofessional conduct.
- 16. Respondent was examined by Charles Seaman, M.D., Diplomate of the American Board of Psychiatry and Neurology, at the request of the Board, Dr. Seaman interviewed respondent and accepted respondent's narrative at face value.

 Respondent clearly did not tell Dr. Seaman the true extent of his sexual misconduct.

 Respondent minimized his participation in inappropriate sexual encounters with patients, and employee/coworkers. Respondent was a poor historian. He claimed not to remember details of who, when, and where. Dr. Seaman's diagnosis and conclusions concerning respondent cannot be relied on.

Respondent's Evidence

17. Respondent presented testimony and a written psychological evaluation by Howard J. Friedman, Ph.D., Clinical Neuropsychologist. Dr. Friedman performed some psychological tests and interviewed him. He concluded that respondent has an impulse control disorder and that respondent's impulsive control disorder and the specific behavior associated with it is in remission. Dr. Friedman also took respondent at face value. The extent and depth of respondent's unprofessional conduct was never evaluated. Characterizing respondent's sexual behavior as "social" does not begin to

deal with the disruptive and negative impact on patients, employee/co-workers, or the work environment.

- 18. Respondent presented numerous letters from co-workers and family members. They all find him to be an excellent podiatrist and fine person. The letter from respondent's present spouse is particularly meaningful. She deals directly with respondent's misconduct and how they are trying to put the matter in the past and move on. Jae Kim, D.P.M., testified at the hearing. He is working with respondent in private practice. He recognizes the severity of respondent's conduct, but believes he has changed.
- 19. Respondent is engaged in church related study with Rev. Samuel Fielder, who testified at the hearing. Respondent is working on understanding his misconduct.
- 20. Respondent had six sessions of psychotherapy in 2016 and 2017 with Michael A. Fritch, M.F.T. Mr. Fritch sent a letter with the dates of attendance and a statement that no further sessions were necessary due to "improvements in overall emotional functioning." It appears that Mr. Fritch did not know about respondent's sexual encounters with patients and the respondent minimized his sexual misconduct. Respondent also attended the Impulse Treatment Center program in Walnut Creek, California. He attended group therapy to deal with his compulsive use of pornography and affairs at work. This again minimizes respondent's unprofessional conduct with patients and his co-workers.
- 21. It is clear that respondent recognizes the need for rehabilitation. He has made some significant efforts. However, there is no reliable evaluation of respondent's mental condition based on the true extent of his misconduct. Under the circumstances there can be no conclusion that respondent is safe to practice and that he will not

resort to sexual misconduct in the future. Revocation is the only appropriate disciplinary action at this time.

Cost Recovery

22. Complainant has requested cost recovery in the amount of \$3,035 for investigation and enforcement, \$2,812.50 for expert review, and \$23,587.50 for prosecution costs. The total amount requested is \$29,435. Respondent has objected to the prosecution costs, specifically to cost associated with settlement preparation/negotiation, witness related preparation, and evidentiary preparation.

Complainant fully explained all costs. The costs are reasonable. In considering the *Zuckerman* factors, the only factor relevant to this matter is respondent's good faith belief in the merits of his position. Respondent must be allowed to present evidence of mitigation, extenuation and rehabilitation. This hearing gave respondent the opportunity to do so. The costs are reduced by \$1,000. The total costs to be paid are \$28,435.

LEGAL CONCLUSIONS

- 1. The standard of proof applied in this proceeding is clear and convincing evidence.
- 2. Pursuant to Business and Professions Code section 2222, the Board has jurisdiction to enforce and administer the law, rules and regulations against doctors of podiatric medicine.

- 3. Pursuant to Business and Professions Code section 2234, the Board is authorized to impose discipline on a podiatrist for unprofessional conduct, including gross negligence. Respondent engaged in acts of gross negligence and general unprofessional conduct when he had sexual encounters with his patients (Findings 4, 5, and 12). Respondent engaged in acts of gross negligence and general unprofessional conduct when he had sexual encounters with employee/coworkers (Findings 14 and 15).
- 4. Pursuant to Business and Professions Code section 726, the Board is authorized to impose discipline for any acts of sexual abuse, misconduct, or relations with a patient, client, or customer (Findings 4,5, and 12).
- 5. Complainant has requested that respondent be ordered to pay the Board the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board has reasonably incurred costs of investigation and enforcement in the amount of \$29,435. (Factual Finding 22.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether costs should be reduced. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent established that his attempt to show rehabilitation was a good faith belief in showing what disciplinary action should be taken. Therefore,

the cost recovery is reduced by \$1,000 for a total amount due of \$28,435. That amount is due prior to any decision by the Board to reinstate respondent's certificate.

6. After considering respondents evidence of rehabilitation, the appropriate disciplinary action at this time is revocation.

ORDER

The Doctor of Podiatric Medicine Certificate Number 4684 issued to Pieter Michiel Lagaay, D.P.M. is hereby revoked. Cost recovery in the amount of \$28,435 is due and owing prior to any reinstatement of respondent's revoked certificate.

DATE: December 2, 2019

Administrative Law Judge

Office of Administrative Hearings

1 2 3 4 5 6	XAVIER BECERRA Attorney General of California JANE ZACK SIMON Supervising Deputy Attorney General LYNNE K. DOMBROWSKI Deputy Attorney General State Bar No. 128080 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 510-3439 Facsimile: (415) 703-5480 E-mail: Lynne.Dombrowski@doj.ca.gov	FILED STATE OF CALIFORNIA MEDICAL BOARD OF CALIFORNIA SACRAMENTO OCT. 2020 19 BY ALCERONIA ANALYST	
7	Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PODIATRIC MEDICINE		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11		·	
12	In the Matter of the First Amended Accusation Against:	Case No. 500-2015-000297	
13	PIETER MICHIEL LAGAAY, D.P.M.	FIRST AMENDED ACCUSATION	
14	1820 Joseph Drive Moraga, CA 94556		
16			
17	Doctor of Podiatric Medicine Certificate No. 4684		
18	Respondent.		
19			
20	Complainant alleges:	·	
21	PARTIES		
22	Brian Naslund (Complainant) brings this Accusation solely in his official capacity as		
23	the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs.		
24	2. On or about July 24, 2006, the Board of Podiatric Medicine issued Doctor of		
25	Podiatric Medicine Certificate Number 4684 to Pieter Michiel Lagaay, D.P.M. (Respondent).		
26	The Doctor of Podiatric Medicine Certificate was in full force and effect at all times relevant to		
27	the charges brought herein and will expire on June 30, 2020, unless renewed.		
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JURISDICTION

- 3. This First Amended 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.
- 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 2234 of the Code provides, in pertinent 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: . . .

- "(b) Gross negligence . . .
- "(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . . "

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- 6. 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.'
 - 7. Section 726 of the Code states, in pertinent part:
- "(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this or under any initiative act referred to in this division. . . ."

COST RECOVERY

- 8. 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 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."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Sexual Misconduct and/or Sexual Relations with Patients)

- 9. Respondent is subject to disciplinary action under section 2234 [unprofessional conduct] and/or 2234(b) [gross negligence], and/or section 726 [sexual misconduct and/or sexual relations with patient] of the Code, for unprofessional conduct as described herein below.
- 10. In late October 2015, Respondent was interviewed on at least two separate occasions during an investigation by his employer, The Permanente Medical Group, Inc. (TPMG), Diablo Service Area, of staff allegations that he was engaging in sexual activity at work with staff and other people.
 - 11. During those interviews with TPMG staff, Respondent admitted the following:
 - a. Within the past year, he had sexual encounters with three patients, while they were under his direct care;
 - b. His sexual encounters with two of his patients took place on Kaiser Permanente (KP) premises, during lunchtime and after 6 p.m., at his clinic offices, in a call room, or in a car in the parking lot;
 - c. He had a sexual encounter with one patient at her private residence on or about October 18, 2015, the day before she was scheduled for a surgery;

- d. He initiated contact with his patients by text messages sent to the patients' personal telephone numbers;
- e. Within the last four years, he had multiple sexual encounters on KP premises with at least nine employees (non-physicians), which occurred both during and after work hours;
- f. Within the last two years, he had multiple sexual encounters with members of the general public on KP premises, in his clinic office and in a call room. He initiated these encounters by email or social media;
- g. He used employer-issued equipment to record, receive, and distribute, via text messaging and email, sexually explicit photos and videos of himself and/or of women with whom he was either involved sexually or was pursuing a sexual relationship.
- 12. On November 3, 2015, the Medical Board received a Section 805 Health Facility/Peer Review Reporting Form from TPMG in which it was reported that, effective October 27, 2015, Respondent resigned his employment "after being notified of an investigation into allegations of inappropriate conduct."
- 13. On December 11, 2017, during an interview with a Medical Board investigator, Respondent admitted to sexual encounters with employees, other persons, and with one former patient. Respondent stated that he did not remember having sex with any patient who was under his care at the time of the sexual encounter.
- 14. On August 4, 2018, Respondent voluntarily submitted to a psychiatric evaluation by a Board-approved and board-certified psychiatrist. During that evaluation, Respondent admitted to having sexual encounters at TPMG with co-workers, patients, and other women whom he met online. Respondent recalled sexual relationships with two TPMG patients, whom he had treated.
- 15. The Board's psychiatrist evaluator concluded that the most fitting terminology or psychiatric diagnosis for Respondent's period of increased and uncontrollable sexual urges and behaviors is "Hypersexual Disorder," which is a diagnosis that is not included in the current Diagnostic and Statistical Manual for Mental Disorders, 5th edition (DSM-V). The psychiatrist

evaluator concluded that Respondent's Hypersexual Disorder is in sustained remission and that he is currently able to practice podiatric medicine safely and without restrictions or conditions.

- 16. Each instance by Respondent of a sexual encounter with a patient constitutes unprofessional conduct through gross negligence pursuant to section 2234, subd. (b) and through sexual misconduct and/or sexual relations with a patient pursuant to section 726.
- 17. Respondent's acts involving sexual encounters and/or sexually explicit communications while on duty at his office or other work premises, as alleged in paragraphs 10 through 16 herein, constitutes general unprofessional conduct pursuant to section 2234.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Sexual Relations with Employees/Co-workers)

- 18. Respondent is subject to disciplinary action under section 2234 [unprofessional conduct] of the Code, for unprofessional conduct regarding each of Respondent's sexual encounters with eleven employees/co-workers, as described herein below.
 - 19. Paragraphs 10 through 14 are incorporated herein by reference, as if fully set forth.
- 20. During the investigation by TPMG/Kaiser Permanente (KP), Respondent admitted to having sexual encounters, over a four year period, with nine employees/co-workers on KP premises during the work day and with two other employees/co-workers exclusively off KP premises.
- 21. All of the eleven identified employees/co-workers, with whom Respondent had sexual encounters, worked in positions that were subordinate to Respondent's position as a podiatric physician working for TPMG in the Diablo Service Area. None of the employees/co-workers were physicians. Respondent's sexual encounters were initiated with these employees/co-workers during their ongoing business relationship.
- 22. Each sexual encounter Respondent had with the eleven employees/co-workers, to which he admitted, constitutes general unprofessional conduct pursuant to section 2234.