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

In the Matter of the Accusation Against: **NASIM KALHOR, D.P.M.** **2100 Solar Drive, Suite 102** **Oxnard, CA 93036** **Podiatrist License No. DPM 4581,** Respondent.	Case No. 500-2018-000757 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 7, 2004, the Podiatric Medical Board issued Podiatrist License Number DPM 4581 to NASIM KALHOR, 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 May 31, 2022, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Podiatric Medical Board (Board), Department of Consumer Affairs, 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 doctors of podiatric medicine.
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> 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, 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:
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> (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.
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> (b) Gross negligence.
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> (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.
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> (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.
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> (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.
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> (d) Incompetence.

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

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

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

6. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

COST RECOVERY

7. 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.

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FACTUAL ALLEGATIONS

8. In 2016, Respondent worked as a podiatrist at LA Orthopedic Institute, located at 38660 Medical Center Drive, Suite A 250, Palmdale, California 93551.

9. Patient A[1] is a seventy-seven (77) year-old woman who initially presented to Respondent in February 2016, due to a fungal infection, bunion pain and painful hammertoe. Patient A was referred to Respondent by her health plan, after seeing a different podiatrist in her medical group who would not treat her.

10. On or about February 18, 2016, Respondent conducted a physical exam and found that Patient A suffered from plantar fasciitis, bunion deformity, hammertoes, of the second through fifth digits, and an unstable gait. Respondent's records did not address Patient A's medical history and the reasoning for the referral to Respondent's office.

11. On or about April 7, 2016, Patient A again presented to Respondent for a follow-up appointment regarding her pain. According to Respondent's chart notes, Patient A was given pre-operative orders during this visit and medication for the surgery. Respondent noted that she spent 45 minutes to discuss the surgery, post-operative care, and risks of the procedure with Patient A. However, no specifics about the discussion were provided in the chart notes. Patient A also signed a consent form during this visit. The consent form included all medical terminology and no description of the procedures in laymen terms.

12. On or about April 11, 2016, Patient A presented to Respondent at Palmdale Regional Hospital for her surgery. According to the operative record, Respondent performed a modified Mayo bunionectomy and hammertoe correction of the second digit, right foot.

13. Patient A returned to Respondent on April 19, 2016, for her first post-operative visit. Respondent's chart note indicates that Patient A was feeling well after surgery. Respondent placed Patient A in an Unna boot and no further diagnosis was given.

14. On or about April 21, 2016, Patient A returned to Respondent for another follow-up visit. Patient A complained of discomfort in the right foot and Respondent changed the dressing on Patient A's foot. No diagnosis was given.

[1] The patient is identified as "Patient A" in this Accusation to protect her privacy.

15. On or about May 12, 2016, Patient A returned to Respondent and complained that her right foot was sore and she felt worse. Respondent indicated that Patient A had swelling, bruising, and blisters to her right foot. No diagnosis was given and Patient A remained in her Unna boot.

16. On or about May 16, 2016, Patient A presented to Respondent because the right foot wire was coming out and her whole leg was swollen. No diagnosis was given and a cast was applied to Patient A's leg.

17. On or about June 13, 2016, Patient A complained that the swelling in her right foot had not gone away and she noticed a ball-like formation underneath her right foot. Patient A described a burning and throbbing pain. Respondent gave Patient A an injection of lidocaine and dexamethasone. A new cast was also applied to Patient A's leg.

18. On or about July 11, 2016, Patient A indicated she had tenderness in her toes and swelling. Respondent gave Patient A an injection to the right ankle or foot. No additional diagnosis was given.

19. On or about August 8, 2016, Patient A had a follow-up visit and again complained of pain and swelling of the foot. No diagnosis was given but a drainage procedure was performed.

20. On or about September 19, 2016, Patient A had a follow-up visit with Respondent. Though the swelling to her foot had decreased, Respondent performed an aspiration of fluid and completed an ultrasound of the right foot.

21. On or about November 14, 2016, Patient A presented to Respondent because of fungus on her toenails. Respondent's chart notes listed no diagnosis and no mention regarding treatment.

22. On or about January 16, 2017, Patient A complained about sharp pain to her right foot. Respondent made a diagnosis of Neuroma A, Bilateral. Respondent's notes indicated that there was an incision and drainage of abscess and Patient A was instructed to continue medications, though no medications were listed in Respondent's notes.

23. In April 2017, Respondent performed a matrixectomy on Patient A after a diagnosis of an ingrown nail on the right foot, fourth toe.

24. On or about May 23, 2017, Patient A complained of painful ingrown nail and hammer toes. Respondent listed a diagnosis of hammertoe with dislocation; onychocryptosis; talocalcano dislocation; diabetes; and synovitis/bursitits contracture. Respondent performed a partial matrixectomy on the right hallux. Respondent's chart notes did not include any information or notes on the examination.

25. In June 2017, Patient A continued to complain of pain in the right foot. Patient A suffered an infection and her right foot was swollen. Throughout the month, Respondent diagnosed Patient A with having an abscess and edema of the right foot; ankle sprain; and unstable ankle/gait. On June 8 and June 15, 2017, an incision and drainage procedure was performed and an Unna boot was applied to Patient A.

26. On or about June 20, 2017, Patient A presented to Respondent for follow-up of cellulitis. An ultrasound was done and found pain around the ankle. Respondent's plan was to continue medication and perform range of motion exercises.

27. In July 2017, Respondent performed two incision and drainage of abscess procedures of the right foot.

28. On or about August 3, 2017, Patient A underwent an MRI, which was negative for osteomyelitis. Respondent found that there was edema in the right foot and diabetic neuropathy. Patient A was told to continue applying medication and perform range of motion exercises.

29. Patient A continued to see Respondent consistently through December 2017, for treatment of her right foot.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

30. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that she committed gross negligence in her care and treatment of Patient A. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 29, above, as though fully set forth herein. The circumstances are as follows:

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31. The standard of care requires that podiatrists maintain complete, accurate and consistent medical records pertaining to patient care.

32. In reviewing Respondent's records for Patient A, there are a significant amount of chart notes that are templates with a great deal of information missing. On numerous dates, the missing information includes Patient A's diagnosis. On other dates, diagnoses are listed but the notes do not include further information or explanation.

33. Respondent's records for Patient A also fail to consistently explain why certain procedures are needed, details of the actual procedure performed, and/or the effectiveness of said procedures.

34. For example, the chart note dated May 23, 2017, indicates that a second surgery was being considered requiring a V-Y plasty. However, there was no documentation as to why the surgery was needed in that chart note or any subsequent chart note.

35. Patient A was seen by Respondent for post-operative care but the documentation of the care was so poor, making Patient A's post-operative status unclear. Respondent failed to take x-rays after the procedure and during the post-operative care, making it unclear if Patient A was healing appropriately and if the post-operative care was within the standard of care.

36. The standard of care requires podiatrists to obtain a proper history of a patient before performing any type of procedure.

37. Respondent's records indicate that a pre-operative examination was performed. However, there was no mention of the results of that examination. There was no indication that vitals were taken and that Patient A was stable enough for surgery.

38. Further, Patient A's medical history was not found in the records. Although Patient A was referred to Respondent, there was no mention of why Patient A's previous podiatrist would not treat her. There is also no indication that Respondent consulted with Patient A's primary doctor regarding the surgery.

39. The standard of care, when obtaining informed consent, requires review of medical procedures with a patient in layman's terms and ensuring that the patient understands the procedure, all risks, alternatives, and complications specific to the procedure.

40. Patient A's signed Consent for Operation, dated April 7, 2016, included standard medical terminology. There was no indication that Respondent explained the consent form or procedure in layman's terms, or that Patient A had a clear understanding of the procedure and its risks.

41. Further, there was no clear documentation attesting to which digit was at issue. Patient A's Consent for Operation indicated that the second digit on the right foot would be operated on. Patient A had a different understanding of which digit is considered the second digit. The medical records did not include any illustrations, which should have been reviewed with Patient A and would have clarified to both where Patient A experienced pain and which digit would be addressed during surgery.

42. Respondent's acts and/or omissions as set forth in paragraphs 30 through 41, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

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

44. The allegations of the First Cause for Discipline, in paragraphs 30 through 42, above, are incorporated herein by reference as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

45. Respondent is subject to disciplinary action under section 2266 of the Code in that she failed to maintain adequate and accurate records in her care and treatment of Patient A. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 29, above, as though fully set forth herein. The circumstances are as follows:

46. The allegations of the First Cause for Discipline, in paragraphs 30 through 42, above, are incorporated herein by reference as if fully set forth.

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DISCIPLINARY CONSIDERATIONS

47. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 7, 2016, in a prior disciplinary action titled *In the Matter of the Accusation Against Nasim Kalhor, D.P.M.* before the Board, in Case Number 500-2014-000144, Respondent's license was revoked, with the revocation stayed, and Respondent was placed on probation for four (4) years, subject to terms and conditions. This action was taken due to sustained allegations of gross negligence, repeated negligent acts, incompetence, and failure to maintain adequate and accurate records. Respondent is still on probation as a result of that decision, which is now final and is incorporated by reference as if fully set forth herein.

48. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant further alleges that on September 5, 2002, in a prior disciplinary action, before the Board, titled *In the Matter of the Statement of Issues Against Nasim Kalhor*, Case No. 1B-2002-135561, a Statement of issues was filed against Respondent. On January 15, 2003, a Decision and Order was issued by the Board where Respondent's application for a Podiatric Medicine Certificate was denied. However, the denial was stayed for three (3) years and Respondent was issued a probationary licensed, subject to terms and conditions. The action was taken due to sustained allegations of conviction of a crime, knowingly making a false statement of fact on an application, dishonesty, and unprofessional conduct. Respondent petitioned for reconsideration and the Board issued an order Denying Petition for Reconsideration. That decision is now final and is incorporated by reference as if fully set forth herein.

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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 Podiatrist License Number DPM 4581, issued to Nasim Kalhor, D.P.M.;

2. Ordering Nasim Kalhor, 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;

3. Ordering Nasim Kalhor, D.P.M. to pay the Podiatric Medical Board the probation monitoring costs, if placed on probation; and,

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

DATED: FEB 22 2021

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

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