

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 ROBERT W. LINCOLN
Deputy Attorney General
4 State Bar No. 316290
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9453
7 Facsimile: (619) 645-2012

8 *Attorneys for Complainant*

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

12
13 In the Matter of the First Amended Accusation
Against:

Case No. 500-2019-000855

14
15 **Schlomo Schmucl, D.P.M.**
16 **3367 W. 1st Street, Ste. 204,**
Los Angeles, CA 9004

FIRST AMENDED
ACCUSATION

17
18 **Podiatrist License No. E-3848,**

19 Respondent.

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21
22 **PARTIES**

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

26 2. On or about July 27, 1992, the Podiatric Medical Board issued Podiatrist License No.
27 E-3848 to Schlomo Schmucl, D.P.M. (Respondent). The Podiatrist License was in full force and
28

1 effect at all times relevant to the charges brought herein and will expire on September 30, 2021,
2 unless renewed.

3 **JURISDICTION**

4 3. This First Amended Accusation is brought before the Board, under the authority of
5 the following laws. All section references are to the Business and Professions Code (Code)
6 unless otherwise indicated.

7 4. Section 2222 of the Code states:

8 The California Board of Podiatric Medicine shall enforce and administer this article
9 as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations
10 proscribed by this chapter are applicable to licensed doctors of podiatric medicine and
11 wherever the Medical Quality Hearing Panel established under Section 11371 of the
12 Government Code is vested with the authority to enforce and carry out this chapter as to
13 licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that
14 same authority as to licensed doctors of podiatric medicine.

15 The California Board of Podiatric Medicine may order the denial of an application or
16 issue a certificate subject to conditions as set forth in Section 2221, or order the revocation,
17 suspension, or other restriction of, or the modification of that penalty, and the reinstatement
18 of any certificate of a doctor of podiatric medicine within its authority as granted by this
19 chapter and in conjunction with the administrative hearing procedures established pursuant
20 to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes,
21 the California Board of Podiatric Medicine shall exercise the powers granted and be
22 governed by the procedures set forth in this chapter.

23 5. Section 2228.5 of the Code states:

24 (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the
25 board shall require a licensee to provide a separate disclosure that includes the licensee's
26 probation status, the length of the probation, the probation end date, all practice restrictions
27 placed on the licensee by the board, the board's telephone number, and an explanation of
28 how the patient can find further information on the licensee's probation on the licensee's
profile page on the board's online license information internet web site, to a patient or the
patient's guardian or health care surrogate before the patient's first visit following the
probationary order while the licensee is on probation pursuant to a probationary order made
on and after July 1, 2019.

...

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.

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

6 7. Section 2234 of the Code states:

7 The board shall take action against any licensee who is charged with unprofessional
8 conduct. In addition to other provisions of this article, unprofessional conduct includes, but
9 is not limited to, the following:

10 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
11 the violation of, or conspiring to violate any provision of this chapter.

12 ...

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

15 ...

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

17 ...

18 8. Section 2236 of the Code states:

19 (a) The conviction of any offense substantially related to the qualifications,
20 functions, or duties of a physician and surgeon constitutes unprofessional conduct within
21 the meaning of this chapter. The record of conviction shall be conclusive evidence only of
22 the fact that the conviction occurred.

23 ...

24 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
25 deemed to be a conviction within the meaning of this section and Section 2236.1. The
26 record of conviction shall be conclusive evidence of the fact that the conviction occurred.

27 COST RECOVERY

28 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 the board a sum not to exceed the actual and
reasonable costs of the investigation and prosecution of the case.

1 (b) The costs to be assessed shall be fixed by the administrative law judge and shall
2 not be increased by the board unless the board does not adopt a proposed decision and in
3 making its own decision finds grounds for increasing the costs to be assessed.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of an Offense Substantially Related to the Qualifications, Functions, or**
6 **Duties of a Physician and Surgeon)**

7 10. Respondent has subjected his Podiatrist License No. E-3848 to disciplinary action
8 under sections 2497, 2222, and 2234, as defined by 2236, subdivision (a), of the Code, in that
9 Respondent was convicted of an offense substantially related to the qualifications, functions or
10 duties of a Physician and Surgeon, as more particularly alleged hereinafter:

11 11. On or about June 15, 2015, Respondent aided, abetted, and conspired with Julian
12 Garcia, Alexander Kiev Martinez, and Steven Rigler to fraudulently submit a bill to Liberty
13 Mutual Insurance Company for \$5,000 for a "Hot Cold Pack" provided to a California Workers'
14 Compensation patient, Patient A¹. Respondent made a \$100 kickback payment to Julian Garcia
15 for the referral of Patient A, a patient of Steven Rigler. In exchange for Respondent's \$100
16 kickback payment, Respondent received a "Hot Cold Pack" prescription for Patient A and
17 Respondent provided the "Hot Cold Pack" to Patient A. Respondent then billed Insurance
18 Company A \$5,000 for filling the prescription. Respondent did not disclose to Liberty Mutual
19 Insurance Company that he received a kickback for the referral of Patient A's "Hot Cold Pack"
20 prescription, and did so with the intent to defraud Liberty Mutual Insurance Company.

21 12. On or about and between June 1, 2015 and June 30, 2015, Respondent aided, abetted,
22 and conspired with Julian Garcia, Alexander Kiev Martinez, and Steven Rigler to fraudulently
23 submit a bill to Insurance Company of the West for \$5,000 for a "Hot Cold Pack" on California
24 Workers' Compensation patient, Patient B². Respondent made a \$100 kickback payment to
25 Julian Garcia for the referral of Patient B, a patient of Steven Rigler. In exchange for
26 Respondent's \$100 kickback payment, Respondent received a prescription for a "Hot Cold Pack"

27 _____
28 ¹ Patient's name is withheld for privacy concerns.

² Patient's name is withheld for privacy concerns.

1 for Patient B. Respondent provided a “Hot Cold Pack” to Patient B and Respondent billed
2 Insurance Company of the West \$5,000 for filling the prescription. Respondent actively
3 concealed and failed to disclose that he was paid an illegal kickback for the referral of Patient B’s
4 “Hot Cold Pack” prescription, and did so with the intent to defraud Insurance Company of the
5 West.

6 13. During the period of 2014 and 2015, Respondent knew that paying a per-patient
7 referral fee was unlawful, Respondent offered to pay and paid a \$100 for each referral of a certain
8 type of durable medical equipment (“DME”), called a “Hot Cold Pack,” Julian Garcia, Alexander
9 Kiev, and Steven Rigler, co-conspired with Respondent to induce physicians to refer to
10 Respondent’s business entities. Respondent knowingly paid Individual 1 more than \$372,000 in
11 these unlawful, per-patient referral fees. Ultimately, Respondent and his co-conspirators
12 submitted or caused to be submitted claims valued at between \$3.5 million and \$9.5 million for
13 “Hot Cold Packs” procured through the payment of bribes and kickbacks.

14 14. On or about March 7, 2019, the San Diego District Attorney’s Office filed a criminal
15 complaint against Respondent in the matter of *The People of the State of California v. Schlomo*
16 *Schmuel*, San Diego County Superior Court Case No. CD280827. Respondent was charged with
17 fourteen (14) felonies for concealing an event affecting a claim in violation of Penal Code section
18 550(b)(3).

19 15. On or about August 6, 2019, pursuant to Rule 11 of Federal Rules of Criminal
20 Procedure, Respondent’s “state” matter, Case No. CD280827, was merged with the “federal”
21 matter, Case No. 3:19-cr-03006-BAS, for the purposes of Respondent entering a guilty plea, in
22 the matter of *The United States of America v. Schlomo Schmuel*, United States District Court,
23 Southern District of California.

24 16. On or about April 21, 2021, in the matter of *The United States of America v. Schlomo*
25 *Schmuel*, United States District Court, Southern District of California, Case No. 3:19-cr-03006-
26 BAS, Respondent pled guilty to an Information charging Conspiracy to Commit Honest Services
27 Mail Fraud and Health Care Fraud, in violation of 18 U.S.C. § 371. Respondent was sentenced to
28

1 thirty-seven (37) months in prison and is currently in the custody of the Federal Bureau of
2 Prisons.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dishonest and/or Corrupt Acts)**

5 17. Respondent has further subjected his Podiatrist License No. E-3848 to disciplinary
6 action under sections 2222, 2227, and 2234, as defined by section 2234, subdivision (e), of the
7 Code, in that he has committed acts of dishonesty or corruption, as more particularly alleged in
8 paragraphs 10 through 16, above, which is hereby incorporated by reference as if fully set forth
9 herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(General Unprofessional Conduct)**

12 18. Respondent has further subjected his Podiatrist License No. E-3848 to disciplinary
13 action under sections 2222, and 2234, of the Code, in that he engaged in conduct which breaches
14 the rules or ethical code of the medical profession, and which demonstrates an unfitness to
15 practice medicine, as more particularly alleged in paragraphs 10 through 17, above, and are here
16 re-alleged as if fully set forth herein.

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P R A Y E R

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 No. E 3848, issued to Schlomo Schmucl, D.P.M.;
2. Ordering Respondent Schlomo Schmucl, D.P.M., 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
3. Taking such other and further action as deemed necessary and proper.

DATED: JUL 09 2021



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

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