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

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| In the Matter of the Accusation Against:<br><br>**John Franklin Swaim II, D.P.M.**<br>**2530 Sister Mary Columba Dr.**<br>**Red Bluff, CA 96080**<br><br>**Doctor of Podiatric Medicine License No. DPM E 4348,**<br><br>Respondent. | Case No. 500-2019-000900<br><br>**A C C U S A T I O N** |

## 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 June 14, 2001, the Board issued Doctor of Podiatric Medicine License No. DPM E 4348 to John Franklin Swaim II, D.P.M. (Respondent). The Doctor of Podiatric Medicine License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2023, unless renewed.

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## JURISDICTION

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

4. Section 2222 of the Code states:

"The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed 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 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."

6. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) 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.

"(d) Incompetence.

". . ."

7. Unprofessional conduct under Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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8. 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."

9. Section 2285 of the Code states:

"The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

"(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

"(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

"(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

"(d) Any medical school approved by the division or a faculty practice plan connected with the medical school."

10. Section 2415 of the Code states:

"(a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

"(b) The division or the board shall issue a fictitious-name permit authorizing

the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

"(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

"(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

"(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing.

"(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

"(d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with that medical school.

"(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2421) pertaining to renewal of licenses.

"(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

"(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

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"(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

"(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations."

**COST RECOVERY**

11. 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**

**(Gross Negligence)**

12. Respondent's license is subject to disciplinary action under sections 2497, 2222, and 2234, subdivision (b), of the Code, in that he committed gross negligence during the care and treatment of Patient A, [1] as more particularly alleged as follows:

13. Respondent is a podiatrist who at all times relevant to the charges brought herein worked at his own clinic, AeroFeet Podiatry Center, in Red Bluff, California. Patient A is a 74-year-old female who saw Respondent for podiatric treatment from at least July 2014 through May 2019. Respondent provided ongoing palliative nail debridement and callus removal of both feet on a periodic basis due to a history of poor circulation, peripheral neuropathy and immunosuppression compromise following a kidney and pancreas transplant in the past.[2] Prior to an extensive surgery in April 2019, Respondent provided conservative treatment to Patient A.

14. On or about January 31, 2019, Respondent saw Patient A for a follow-up visit. Respondent's visit summary includes three different summaries under the heading "History of Present Illness." The first states that she presented "for a scheduled follow-up visit regarding thickened toenails, discolored toenails, and painful toenails. Symptoms have been present for years and have been about the same. The patient states she has had previous treatments. She has

[1] The patient's name is omitted to protect privacy. It will be provided in discovery.

[2] Respondent regularly documented that Patient A possessed significant lack of circulation in her feet, a loss of neurologic sensation and atrophic skin changes. In May 2019, however, various providers at Mercy Medical Center noted that that circulation to Patient A's feet was normal: "Left dorsalis pedis pulse 2+." On February 6, 2020, another podiatrist examined Patient A and noted that she did not have any reduction in circulation or atrophy of tissue in the lower extremity or loss of sensation neurologically.

tried nail debridement but the problem has persisted." The second summary states that she presented "for follow-up regarding no corns no calluses today on the right foot." And the third summary states that she presented "for a scheduled follow-up visit for hammer-toes of hallux and ingrown toenail TA." In another place, the visit summary states that she "is here to discuss foot surgery to correct the hammertoe on the great toe on the left foot."

15. Respondent's documentation for the January 31, 2019 visit also contains two summaries under the heading "Pain Assessment." They both describe ongoing pain and that nothing seems to alleviate the pain. The first summary states that the pain "began weeks ago and is located on the right hallux and left hallux;" however, the second summary states that it "began months ago is located left foot." The first summary describes the pain as "burning and sharp" while the second describes it as "throbbing."

16. Respondent's documented plan on January 31, 2019 states that he mechanically debrided and filed Patient A's toenails, discussed surgery to correct "her hallux hammertoe," and "recommend[ed] Watermen Green to length shortened that 1st metatarsal as well with fixation as well [sic]."

17. On or about April 3, 2019, Patient A consented to and Respondent performed a Waterman-Green Bunionectomy, a great toe joint fusion and permanent removal of both great toenail borders, all done on the left foot. Notably, there is no intake narrative explaining why this extensive surgery was being done on an "at-risk" patient with a history of immunosuppression, circulatory challenges, and no recent x-rays or chart notes of rationale for the surgery.

18. On or about April 10, 2019, Respondent saw Patient A for her first post-operative visit. He noted that the correction looked satisfactory in his examination chart. Respondent's records show one post-operative x-ray image and the physical images provided to the Board were blank.

19. On or about April 17, 2019, at the second post-operative visit, Respondent noted that Patient A's left foot "looked bad" with signs of infection at the surgical site including cellulitis, drainage, dehiscence of the entire incision site, and swelling. Respondent swabbed the incision site for cultures and sensitivities. He left the implants and sutures intact, noting that the sutures

were loose. He also re-dressed the wound site, started Patient A on oral antibiotics (Septra DS), and advised her to continue rest with minimal weight on her left foot in the surgical shoe.

20. On or about April 22, 2019, Patient A returned for evaluation of the infected surgical site. Respondent noted there was still redness and dehiscing along the incision site. Respondent incorrectly reported culture results as Pseudomonas in his note. (The laboratory results were Proteus mirabilis, heavy growth.) Respondent changed the treatment antibiotics to Cipro 750 mg, twice daily. Respondent documented a physical examination showing a "pin out the end of the toe" and erythema around the incision site. Respondent did not document why he did not remove the K-wires or sutures. Respondent advised Patient A to begin the new oral antibiotics and return to the clinic in 4 days.

21. On or about April 25, 2019, Patient A returned for another evaluation of the infected surgical site. Respondent's documentation is largely the same as the prior visit but notes that the symptoms improved and the "foot is improved dramatically now." He advised Patient A to return in one week.

22. On or about April 29, 2019, Patient A returned for another follow-up evaluation. Respondent again noted redness in the surgical area, loose sutures in the incision, a "pin out the end of the toe," and that the "wounds [sic] dehiscing along the entire incision line." Respondent documented that he removed the pin and sutures and redressed the incision. Respondent advised Patient A to continue the antibiotics and provided a refill. He advised her to return in 4 days.

23. On or about May 2, 2019, Patient A returned for another follow-up evaluation. Respondent noted, "The foot is improved dramatically now," but he also documented a wound dressing change, indicating there must have been some opening of the wound site. He instructed Patient A to keep the foot dry. The physical examination noted there was still a pin at the end of the big toe, contrary to the previous visit summary. It is also noted again that the patient needed to pick up more Cipro 750 mg for the infection. Respondent noted "less pain in the foot today" as well as "no pain in the foot." At this point, Respondent had not ordered any additional X-rays, other diagnostic studies (such as MRI), additional blood labs, and had not consulted any other

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medical providers regarding the management of the infection. Respondent advised Patient A to return in 3 days despite a note stating that Patient A's "foot is improved dramatically."

24. On or about the morning of May 6, 2019, Patient A presented at Respondent's clinic and reported that she had gone to the Emergency Room at St. Elizabeth Community Hospital the night before and was told to see Respondent immediately for treatment advice. Respondent again noted that Patient A's "pain is well controlled" but also described Patient A as "feverish with chills," "severe pain in the left foot and ankle area." Respondent noted that she reported going to "some urgency room on Sunday yesterday was given Tylenol and sent home." Respondent also noted that Patient A did not receive any antibiotics; although the admission notes from Mercy Medical Emergency Room later that day indicate that St. Elizabeth Community Hospital gave IV antibiotics to Patient A the day before. Respondent referred Patient A to the Emergency Room in Redding, Mercy Medical Center Redding, along with a copy of the culture results from April 17, 2019.

25. On or about May 6, 2019, Patient A was admitted to Mercy Medical Center Redding and treated for her infected foot and secondary signs of possible systemic infection and osteomyelitis of the bone. The admission evaluation noted that Patient A's foot presented with signs of osteomyelitis, erythema, and swelling consistent with a deep postoperative infection from the prior procedures done in Respondent's office on April 3, 2019. The discharge notes include a diagnosis of left hallux wound dehiscence and cellulitis with osteomyelitis, and state that an MRI "confirms hallux metatarsal and phalangeal acute osteomyelitis with possible septic arthritis." It further notes that Patient A presented with sepsis at admission.

26. The hospital's wound care of Patient A's left foot included removing foreign bodies in the infected surgical site by "pulling out one pin" while she was there (even though Respondent's documentation states that he had already done that). The hospital records also note that Patient A became "progressively fatigued at home" and that her husband brought her to the hospital on May 5, 2019, after finding Patient A passed out in her yard.

27. The hospital performed additional studies—including MRI of the left foot, blood cultures, and vascular studies—showing signs of deeper infection of tissue and bone, which

indicated the need for deeper wound care. The hospital provided daily aggressive debridement along with IV antibiotics to reverse the post-surgical infection.

28. On or about May 9, 2019, the hospital discharged Patient A after inserting a PICC[3] line for long-term intravenous antibiotics and regular home wound care treatment. Arrangements were made for home health nursing to provide wound care and IV antibiotics for six weeks. Following the in-patient wound care and six weeks of home health care, Patient A's wound went on to heal and she was discharged to follow-up with Respondent.

29. During an interview with Board investigators on or about September 2, 2020 (Board Interview), Respondent stated that he first treated Patient A before 2010 and had provided general podiatry care the past few years. Respondent admitted that he copied and pasted notes in Patient A's charts. Respondent stated that he performed the April 2019 surgery in a multi-use (or all-purpose) room at his clinic. He stated that he employs a medical assistant and two others who "are just trained within the practice."

30. Respondent committed gross negligence in his care and treatment of Patient A, including but not limited to:

A. Respondent failed to document or explain at the Board Interview why he performed the above procedure, why he performed it in a high-risk location, and he further failed to appropriately respond to a serious post-surgical infection.

B. Respondent performed the above procedure—involving multiple bone and tissue corrective surgery—in an inappropriate facility (i.e., a multipurpose treatment room) with questionable medical staff assistance.

## SECOND CAUSE FOR DISCIPLINE

**(Repeated Negligent Acts)**

31. Respondent's license is subject to disciplinary action under sections 2497, 2222, and 2234, subdivision (c), of the Code, in that he committed repeated negligent acts during the care and treatment of Patient A, as more particularly alleged in paragraphs 13 through 30 above, which are hereby incorporated by reference and realleged as if fully set forth herein. Additional

[3] A peripherally inserted central catheter used to administer long-term antibiotics.

circumstances are as follows: Respondent failed to maintain adequate and accurate records during the care and treatment of Patient A.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate and Accurate Records)**

32. Respondent's license is subject to disciplinary action under sections 2497, 2222, and 2266 of the Code in that he failed to maintain adequate and accurate medical records relating to the care and treatment of Patient A, as more particularly alleged in paragraphs 13 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**FOURTH CAUSE FOR DISCIPLINE**

**(Failure to Obtain Fictitious Name Permit)**

33. Respondent's license is subject to disciplinary action under sections 2497, 2222, and 2285 of the Code in that he used a fictitious name for his clinic, AeroFEET Podiatry Center, without obtaining a fictitious name permit obtained pursuant to section 2415 of the Code, as more particularly alleged in paragraphs 13 through 32, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**FIFTH CAUSE FOR DISCIPLINE**

**(General Unprofessional Conduct)**

34. Respondent's license is subject to disciplinary action under sections 2497, 2222, and 2234 of the Code in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 13 through 33, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

**PRAYER**

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

1. Revoking or suspending Doctor of Podiatric Medicine License Number DPM 4348, issued to John Franklin Swaim, D.P.M.;

2. Revoking, suspending or denying approval of John Franklin Swaim, D.P.M.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering John Franklin Swaim, D.P.M., to pay the Board the reasonable costs of investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring; and

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

DATED: JUL 20 2021

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

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