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 WAYNE SCIVALLY, D.P.M.<br><br>Doctor of Podiatric Medicine<br>License No. E 4319<br><br>Respondent | ) | File No: 500-2019-000849 |

## DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Podiatric Medical Board, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on JAN 13 2022

IT IS SO ORDERED DEC 14 2021

PODIATRIC MEDICAL BOARD

Judith Manzi, D.P.M., President

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
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*Attorneys for Complainant*

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

| In the Matter of the Accusation Against:<br><br>**JOHN WAYNE SCIVALLY, D.P.M.**<br>**130 La Casa Via, Suite 1-204**<br>**Walnut Creek, CA 94598**<br><br>**Podiatric Medicine Certificate No. E4319**<br><br>Respondent. | Case No. 500-2019-000849<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |
|---|---|

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Brian Naslund (Complainant) is the Executive Officer of the Podiatric Medical Board (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Lawrence Mercer, Deputy Attorney General.

2. Respondent John Wayne Scivally, D.P.M. (Respondent) is represented in this proceeding by his attorneys, Aaron T. Schultz, Esq., and Galloway, Lucchese, Everson and Picchi, 2300 Contra Costa Blvd., Pleasant Hill, CA 94523.

3. On or about January 19, 2001, the Board issued Podiatric Medicine Certificate No. E4319 to John Wayne Scivally, D.P.M. (Respondent). The certficate was in full force and effect at all times relevant to the charges brought in Accusation No. 500-2019-000849, and will expire on January 31, 2023, unless renewed.

## JURISDICTION

4. Accusation No. 500-2019-000849 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 30, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 500-2019-000849 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 500-2019-000849. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 500-2019-000849, if proven at a hearing, constitute cause for imposing discipline upon his certificate. For the purpose of resolving the Accusation without the expense and uncertainty of

further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that Respondent hereby gives up his right to contest those charges.

10. Respondent further agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 500-2019-000849 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees that his certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

12. This stipulation shall be subject to approval by the Podiatric Medical Board. Respondent understands and agrees that counsel for Complainant and the staff of the Podiatric Medical Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Podiatric Medicine Certificate No. E4319 issued to Respondent John Wayne Scivally, D.P.M. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

The medical record keeping course that was taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision shall be accepted towards the fulfillment of this condition, if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. EDUCATION COURSE Within 60 days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge, shall include, but not be limited to, wound management and care, and shall be Category I certified or Board approved and limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at the respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements, which must be scientific in nature, for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. MONITORING - PRACTICE Within 30 days of the effective date of this Decision, the entire practice shall be monitored, including, but not limited to the following: medical records, charting, pre and postoperative evaluations, all surgical procedures and billing records.

The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor of podiatric medicine from its panel of medical consultants or panel of expert reviewers as the monitor.

The monitor shall provide quarterly reports to the Board or its designee which include an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of podiatric medicine or billing, or both, and whether respondent is practicing podiatric medicine safely.

The Board or its designee shall determine the frequency and practice areas to be monitored. Such monitoring shall be required during the entire period of probation. The Board or its designee may at its sole discretion also require prior approval by the monitor of any medical or surgical procedures engaged in by the respondent. The respondent shall pay all costs of such monitoring and shall otherwise comply with all requirements of his or her contract with the monitor. If the monitor terminates the contract, or is no longer available, the Board or its designee shall appoint a new monitor immediately. Respondent shall not practice at any time during the probation until the respondent provides a copy of the contract with the current monitor to the probation investigator and such contract is approved by the Board.

Respondent shall provide access to the practice monitor of respondent's patient records and such monitor shall be permitted to make direct contact with any patients treated or cared for by respondent and to discuss any matters related to respondent's care and treatment of those patients. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to provide to the Board or its designee any relevant information. If the practice monitor deems it necessary to directly contact any patient, and thus require the disclosure of such patient's identity, respondent shall notify the patient that the patient's identity has been requested pursuant

to the Decision. This notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by respondent and a copy of such notification shall be maintained in each patient's file. The notifications signed by respondent's patients shall be subject to inspection and copying by the Board or its designee at any time during the period of probation that respondent is required to comply with this condition. The practice monitor will sign a confidentiality agreement requiring him or her to keep all patient information regarding respondent's patients in complete confidence, except as otherwise required by the Board or its designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

In lieu of a monitor, respondent may participate in the professional enhancement program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

4. NOTIFICATION Prior to engaging in the practice of medicine, the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of podiatric medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. PHYSICIAN ASSISTANTS Prior to receiving assistance from a physician assistant, respondent must notify the supervising physician of the terms and conditions of his/her

probation.

6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules governing the practice of podiatric medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. PROBATION COMPLIANCE UNIT Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of podiatric medicine in respondent's place of residence. Respondent shall maintain a current and renewed California doctor of podiatric medicine's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office with the Board or its designee, upon request, at various intervals and either with or without notice throughout the term of probation.

10. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions, with the exception of this condition, and the following terms and conditions of probation: Obey All Law; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing podiatric medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11. FAILURE TO PRACTICE PODIATRIC MEDICINE - CALIFORNIA RESIDENT In the event the respondent resides in the State of California and for any reason respondent stops practicing podiatric medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California as defined in this condition will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code section 2472.

12. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate will be fully restored.

13. VIOLATION OF PROBATION If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against respondent.

14. COST RECOVERY Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of $16,284.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent of his/her obligation to reimburse the Board for its costs.

15. LICENSE SURRENDER Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice podiatric medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall

be deemed disciplinary action. If respondent re-applies for a podiatric medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

17. NOTICE TO EMPLOYEES Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which respondent has been disciplined and the terms and conditions of probation to all employees involved in his/her practice. Within fifteen (15) days of the effective date of this Decision, respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and Decision in the case and understand respondent's terms and conditions of probation.

18. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.

19. COMPLIANCE WITH REQUIRED CONTINUING MEDICAL EDUCATION Respondent shall submit satisfactory proof biennially to the Board of compliance with the requirement to complete fifty hours of approved continuing medical education, and meet continuing competence requirements for re-licensure during each two (2) year renewal period.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Aaron T. Schultz . I understand the stipulation and the effect it will have on my Podiatric Medicine Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Podiatric Medical Board.

DATED: Oct. 29, 2021

JOHN WAYNE SCIVALLY, D.P.M.
*Respondent*

I have read and fully discussed with Respondent John Wayne Scivally, D.P.M. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

GALLOWAY, LUCCHESE, EVERSON & PICCHI

DATED: 11/4/2021

AARON T. SCHULTZ
*Attorney for Respondent*

## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Podiatric Medical Board.

DATED: 11/9/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

LAWRENCE MERCER
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

**Accusation No. 500-2019-000849**

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
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*Attorneys for Complainant*

**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 WAYNE SCIVALLY, D.P.M.**<br>**130 La Casa Via, Suite 1-204**<br>**Walnut Creek, CA 94598**<br><br>**Podiatric Medicine Certificate No. E4319**<br><br>Respondent. | Case No. 500-2019-000849<br><br>**ACCUSATION** |

## 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.

2. On or about January 19, 2001, the Podiatric Medical Board issued Podiatric Medicine Certificate Number E4319 to John Wayne Scivally, D.P.M. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2021, unless renewed.

## 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 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 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 requires that the Board take action against any licensee charged with unprofessional conduct, which includes, but is not limited to:

"(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 breach of the standard of care."

7. Section 2266 of the Code provides that "failure of a physician to maintain adequate and accurate medical records relating to the provision of services to their patients constitutes unprofessional conduct."

**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 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."

## FACTUAL ALLEGATIONS

9. At all relevant times, Respondent was a doctor of podiatric medicine with a specialization in foot and ankle surgery in Contra Costa County, California.

10. On September 4, 2018, Patient 1, a 19-year old male, came under Respondent's care and treatment with a chief complaint of a hypermobile or detached fat pad plantar to the calcaneus. Patient 1 had a history significant for an October 10, 2015 truck versus pedestrian accident, which resulted in multiple fractures of the left leg and foot as well as a degloving injury to the left heel and ankle. When he presented to Respondent nearly three years post-accident, he continued to complain of pain and instability to the left foot, which was unimproved despite the use of orthotics. Respondent confirmed the diagnosis of severe displacement of the calcaneal fat pad, which functions to protect the underlying structures (neurovascular tissues, sensitive periosteum, ligaments and tendons) from undue pressure and shocks. The patient was dissatisfied with orthotics that had been prescribed for the condition and, at a subsequent visit on September 25, 2018, Respondent offered a treatment plan which included surgical reattachment of the calcaneal fat pad with Mitek soft tissue anchors and propylene mesh. Respondent's choice of the procedure and use of biocompatible materials demonstrated a lack of knowledge regarding the risk of breakdown, non-healing and/or infection.

11. On December 17, Patient 1 was seen by Respondent for a pre-operative examination. The record of this visit is virtually identical to the two previous visits, indicating that

Respondent's electronic record keeping utilizes templates and respondent's records are not accurate records of what transpired at a specific visit.

12. On December 28, 2018, Respondent performed a surgical reattachment of the calcaneal fat pad to the left heel with Mitek anchors and propylene mesh.

13. On January 4, 2019, Patient 1 returned for a post-surgical follow up examination. On that occasion, Respondent was not in the office and a medical assistant removed his cast and inspected the surgical site; however, the chart note does not disclose that Respondent did not examine the patient on that date. At this visit, Patient 1 recalls that the medical assistant observed a pressure ulcer of the dorsal foot, but it is not noted. In a subsequent interview with the Board's medical consultant, Respondent stated that he did observe a small abrasion at the next visit on January 10 ("That's why I put him on antibiotics later"), but again there is no record of it. In fact, except for variations such as an antibiotic prescription or, later, a planned I&D (incision and drainage), the records for each of five post-operative visits are similar in content and do not reflect anything but normal post-operative healing. Respondent later explained the planned I&D was intended to clean the dry eschar from the surgical wound to make it look better and to satisfy the patient and his father because, although he assured them it was healing, "they think they know better."

14. At the fifth post-operative visit on February 21, 2019, Respondent again described the surgical wound as "well coapted (closed) with black, stable eschar (dead tissue found in a full-thickness wound) around site without drainage, odor or fluctuance." A photograph taken by the patient at about the same time shows a dehisced (separated) wound with devitalized margins encompassing the width of the heel. Respondent did not consider and/or did not document suspicions that the wound was failing to heal. Although he ordered Keflex empirically, which he later explained was for the dorsal pressure ulcer, he did not perform a probe to bone test to rule out infection in the surgical wound. The patient's health plan removed Respondent from its list of network providers and Patient 1 did not return to care.

15. On February 27, 2019, Patient 1 and his father became so concerned over the non-healing surgical wound and dorsal ulcer that they presented to a local ED. There the patient was

diagnosed with infections of the wound and bone. He was admitted to the hospital, where he underwent removal of the foot surgical implants followed by six weeks of IV antibiotics for osteomyelitis.

## CAUSE FOR DISCIPLINE

(Repeated Negligent Acts, Inadequate and Inaccurate Records)

16. Respondent is subject to disciplinary action under Code sections 2234, 2234(c) and 2266 in that Respondent engaged in acts of unprofessional conduct, repeated acts of negligence and failed to keep adequate and accurate records. The circumstances are as follows:

A. Respondent inappropriately used a template in a manner and to such an extent that it cannot be determined with certainty what transpired at a specific patient encounter or what Respondent's reasoning was;

B. Respondent formulated a treatment plan for reattachment of soft tissue to bone without recognizing the elevated probability of resulting breakdown, non-healing or infection;

C. Respondent failed to recognize, document and respond to signs of post-operative infection.

## DISCIPLINE CONSIDERATIONS

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about May 28, 2007, in a prior disciplinary action titled In the Matter of the Accusation Against John Wayne Scivally, D.P.M. before the Podiatric Medical Board, in Case Number 1B-2005-166794. Respondent's certificate was placed on a three-year probation with terms and conditions based upon allegations of negligence and inadequate documentation.

## 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 Podiatric Medicine Certificate Number E4319, issued to John Wayne Scivally, D.P.M.;

2. Ordering John Wayne Scivally, 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; and,

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

DATED: OCT 30 2020

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

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