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

In the Matter of the Accusation against: JOHN FRANKLIN SWAIM II, D.P.M. Doctor of Podiatric Medicine License No. E 4348 Respondent	)	File No: 500-2019-000900

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 of the Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on JUL 15 2022

IT IS SO ORDERED JUN 16 2022

PODIATRIC MEDICAL BOARD

Judith Manzi, D.P.M.
President

ROB BONTA
Attorney General of California
STEVEN D. MUNI
Supervising 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: **JOHN FRANKLIN SWAIM II, D.P.M.** **2530 Sister Mary Columba Dr.** **Red Bluff, CA 96080** **Doctor of Podiatric Medicine License No. E 4348** Respondent.	Case No. 500-2019-000900 OAH No. 2021080263 **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 Ryan J. McEwan, Deputy Attorney General.

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2. Respondent John Franklin Swaim II, D.P.M. (Respondent) is represented in this proceeding by attorney Jonathan C. Turner, whose address is: 3620 American River Drive, Suite 120, Sacramento, CA 95864.

3. On or about June 14, 2001, the Board issued Doctor of Podiatric Medicine License No. 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 in Accusation No. 500-2019-000900, and will expire on July 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 500-2019-000900 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 July 20, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 500-2019-000900 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. 500-2019-000900. Respondent has also carefully read, fully discussed with 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.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 500-2019-000900, if proven at a hearing, constitute cause for imposing discipline upon his Doctor of Podiatric Medicine License.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 500-2019-000900, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Doctor of Podiatric Medicine License No. E 4348 to disciplinary action.

11. Respondent agrees that his Doctor of Podiatric Medicine License 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.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Doctor of Podiatric Medicine License No. E 4348 issued to Respondent John Franklin Swaim II, 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. 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 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.

2. 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.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 $9,967.50 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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, Jonathan C. Turner. I understand the stipulation and the effect it will have on my Doctor of Podiatric Medicine License. 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: 3-30-22

JOHN FRANKLIN SWAIM II, D.P.M.
Respondent

I have read and fully discussed with Respondent John Franklin Swaim II, 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.

DATED: 3-30-22

JONATHAN C. TURNER
Attorney for Respondent

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ENDORSEMENT

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

DATED: 3/30/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General

Ryan J. McEwan

RYAN J. MCEWAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

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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: **John Franklin Swaim II, D.P.M.** **2530 Sister Mary Columba Dr.** **Red Bluff, CA 96080** **Doctor of Podiatric Medicine License No. DPM E 4348,** Respondent.	Case No. 500-2019-000900 **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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