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>James Francis Brown, D.P.M.<br><br>Doctor of Podiatric Medicine Certificate No. E-4434<br><br>Respondent. | ) | Case No: 500-2022-001369 |

## DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on MAR 15 2024.

DATED FEB 15 2024

PODIATRIC MEDICAL BOARD

Carolyn McAloon, D.P.M, President

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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>**JAMES FRANCIS BROWN, D.P.M.**<br>**321 Glady Ave.**<br>**Long Beach, CA 90814**<br><br>**Doctor of Podiatric Medicine License No. 4434**<br><br>Respondent. | Case No. 500-2022-001369<br><br>OAH No. 2023070277<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 Jade Wolansky, Deputy Attorney General.

2. Respondent James Francis Brown, D.P.M. (Respondent) is represented in this proceeding by attorney Michael J. Khouri, Esq., whose address is: 101 Pacifica, Suite 380 Irvine, CA 92618-3330.

3. On or about July 16, 2002, the Board issued Doctor of Podiatric Medicine License No. 4434 to James Francis Brown, D.P.M. (Respondent). The Doctor of Podiatric Medicine License expired on July 31, 2024, and has not been renewed.

## JURISDICTION

4. Accusation No. 500-2022-001369 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 June 23, 2023. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 500-2022-001369 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. 500-2022-001369. 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.

## CULPABILITY

9. Respondent admits that, at a hearing, Complainant could establish a *prima facie* case or factual basis for the charges and allegations contained in Accusation No. 500-2022-001369, and agrees that he has thereby subjected his Doctor Podiatric Medicine License No. 4434 to disciplinary action.

10. Respondent further agrees that if an Accusation is ever filed against him before the Podiatric Medical Board, all of the charges and allegations contained in Accusation No. 500-2022-001369 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 or elsewhere.

11. Respondent agrees the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.5, serves to protect the public interest.

12. Respondent agrees that his Doctor of Podiatric Medicine License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

**CONTINGENCY**

13. 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.

14. 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.

15. 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. 4434 issued to Respondent JAMES FRANCIS BROWN, D.P.M. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - TOTAL RESTRICTION Respondent shall not order, prescribe, dispense, administer or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered or possessed by Respondent during probation showing all the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, and 4) the indications and diagnosis for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises is a violation of probation.

3. CONTROLLED SUBSTANCES - ABSTAIN FROM USE Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, Respondent shall notify the Board or its designee of the issuing practitioner's name, address, and telephone

number; medication name and strength; and issuing pharmacy name, address, and telephone number.

4. ALCOHOL - ABSTAIN FROM USE Respondent shall abstain completely from the use of products or beverages containing alcohol.

5. ETHICS COURSE Within 60 days of the effective date of this Decision, Respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Board or its designee.

An ethics 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 the effective date of the Decision.

6. PSYCHIATRIC EVALUATION Within 30 days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board appointed Board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of the requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

Respondent shall not engage in the practice of podiatric medicine until notified by the Board or its designee that Respondent is mentally fit to practice podiatric medicine safely. The

period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

7. PSYCHOTHERAPY Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a Board Certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board appointed Board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over the Respondent's license and the period of probation shall be extended until the Board determines that the Respondent is mentally fit to resume the practice of podiatric medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

8. MEDICAL EVALUATION AND TREATMENT Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its

designee.

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within 30 days of the requirement notice, submit to the Board or its designee for its prior approval the name and qualifications of a treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall, within 15 calendar days, undertake and continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment that the Board or its designee deems necessary.

If prior to the completion of probation Respondent is found to be physically incapable of resuming the practice of podiatric medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is physically capable of resuming the practice of podiatric medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.

Respondent shall not engage in the practice of podiatric medicine until notified in writing by the Board or its designee of its determination that Respondent is medically fit to practice safely.

9. 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. 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.

10. SOLO PRACTICE Respondent is prohibited from engaging in the solo practice of podiatric medicine.

11. PATIENT DISCLOSURE Before a patient's first visit following the effective date of this order and while the Respondent is on probation, the Respondent must provide all patients, or patient's guardian or health care surrogate, with a separate disclosure that includes the Respondent's probation status, the length of the probation, the probation end date, all practice restrictions placed on the Respondent by the board, the board's telephone number, and an explanation of how the patient can find further information on the Respondent's probation on the respondent's profile page on the board's website. Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to provide a disclosure if any of the following applies: (1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the patient.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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 BPM 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 $80,000.00 (eighty thousand dollars) 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.

28. CLINICAL DIAGNOSTIC EVALUATION AND REPORTS Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has 3 years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last 5 years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the

following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than 10 days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within 5 business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least 2 times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the

Board or its designee.

29. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION Within 7 days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

30. BIOLOGICAL FLUID TESTING Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to 5 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous 5 consecutive years of probation, may testing be reduced to 1 time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced,

observed, biological fluid testing and meets all of the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within 1 business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within 7 business days of receipt of the specimen. The Board will be notified of non-negative results within 1 business day and will be notified of negative test results within 7 business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within 1 business day and negative test results within 7 business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within 1 business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

31. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS Within 30 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of 3 years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last 5 years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the

Board, or its designee, within 24 hours of the unexcused absence.

32. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEES Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physicians and surgeons, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last 5 years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within 1 business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within 1 hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or

its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within 3 calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

33. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSES Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice

order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition 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, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

34. If Respondent should petition for early termination or modification of probation, or if an Accusation and/or Petition to Revoke Probation is filed against the Respondent before the Board, or Respondent should ever apply or reapply for a new license or certification, and/or file a petition for reinstatement of a license, before the Board or any other health care licensing action agency in the State of California, all of the charges and allegations contained in the Accusation No. 500-2022-001369 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement of Issues or any disciplinary proceeding seeking to deny, restrict, or revoke licensure or any petition proceeding seeking to reinstate licensure or modify probation.

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael J. Khouri, Esq. 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: 11/10/2023

JAMES FRANCIS BROWN, D.P.M.
*Respondent*

I have read and fully discussed with Respondent James Francis Brown, 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: 12/6/2023

MICHAEL J. KHOURI, ESQ.
*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: December 6, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

JADE WOLANSKY
Deputy Attorney General
*Attorneys for Complainant*

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## Exhibit A

**Accusation No. 500-2022-001369**

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**JAMES FRANCIS BROWN, D.P.M.**<br>**321 Gladys Ave.**<br>**Long Beach, CA 90814**<br>**Doctor of Podiatric Medicine License No. E-4434**<br><br>Respondent. | Case No. 500-2022-001369<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 July 16, 2002, the Podiatric Medical Board issued Doctor of Podiatric Medicine License Number E-4434 to JAMES FRANCIS BROWN, D.P.M. (Respondent). The Doctor of Podiatric Medicine License will expire on July 31, 2024, unless renewed.

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## JURISDICTION

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

## STATUTORY PROVISIONS

4. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Section 493 of the Code states:

> (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.
>
> (b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:
>
> (A) The nature and gravity of the offense.
>
> (B) The number of years elapsed since the date of the offense.
>
> (C) The nature and duties of the profession.
>
> (2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.
>
> (c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."
>
> (d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:
>
> (1) The State Athletic Commission.
>
> (2) The Bureau for Private Postsecondary Education.
>
> (3) The California Horse Racing Board.
>
> (e) This section shall become operative on July 1, 2020.

6. Section 652 of the Code states, in pertinent part:

Violation of this article [Article 6, commencing with Section 650 of the Code] in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board shall have all the powers granted therein.

7. Section 802.1 of the Code provides:

(a)(1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant shall report either of the following to the entity that issue his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000).

8. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

9. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the

condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

10. Section 2021 of the Code states:

(a) If the board publishes a directory pursuant to Section 112, it may require persons licensed pursuant to this chapter to furnish any information as it may deem necessary to enable it to compile the directory.

(b) Each licensee shall report to the board each and every change of address, including an email address within 30 days after each change, giving both the old and new address. If an address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address. If another address is the licensee's address of record, the licensee may request that the second address not be disclosed to the public.

(c) Each licensee shall report to the board each and every change of name within 30 days after each change, giving both the old and new names.

(d) Each applicant and licensee shall have an electronic mail address and shall report to the board that electronic mail address no later than July 1, 2022. The electronic mail address shall be considered confidential and not subject to public disclosure.

11. 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.

12. 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.

". . .

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

". . ."

13. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

". . ."

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

14. Section 2237 of the Code states:

"(a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

"(b) Discipline may be ordered in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her peal of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

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15. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

16. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

17. Section 2459.4 of the Code states:

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

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(f) For purposes of this section:

(1) "Board" means the California Board of Podiatric Medicine.

(2) "Licensee" means a person licensed by the California Board of Podiatric Medicine.

## REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the

following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

## COST RECOVERY

19. 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.

## FACTUAL ALLEGATIONS

20. On or about December 22, 2022, a consumer complaint from Stockdale Podiatry was filed with the Board alleging that Respondent was an impaired provider due to drug use. The director of Stockdale Podiatry advised the Board investigator that Respondent was acting strangely at work, appeared to be using drugs, and that Respondent provided a letter stating that

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he was entering into a drug-counseling program. Further details of the complaint are included below.

21. Prior to this complaint, on or about August 8, 2019, Respondent was arrested for driving under the influence of drugs with a suspended or revoked license. Respondent was driving his vehicle at a high rate of speed northbound on I-405 and collided with the barriers on the side of the freeway. Two witnesses drove Respondent to the police station where he immediately began to bang on the front door of the building. Respondent appeared to have red and watery eyes, but denied drinking any alcohol. Respondent stated that he had taken Adderall and Trintellix[1] prior to the collision. Respondent stated that camouflaged men that the police could not see were following him. Respondent said that the camouflaged men kept injecting him with PCP[2]. Respondent told the officers that they wouldn't be able to see the men. Respondent refused to submit to a Drug Recognition Expert, and was taken to the hospital to have a blood sample taken. The laboratory testing confirmed that Respondent had 144 ng/mL of methamphetamine, and 21 ng/mL of amphetamines in his system immediately following his arrest.

22. On or about May 5, 2020, in a criminal proceeding titled People of the State of California vs. James Francis Brown, in Orange County Superior Court, Case Number 20WM06029, Respondent was charged with violating Vehicle Code section 23152, subdivision (f), and Vehicle Code section 14601.1, subdivision (a),

23. On or about May 16, 2022, Respondent pled guilty to the charges and offered as the factual basis that he unlawfully drove a motor vehicle on a highway under the influence of a controlled substance without a valid driver's license. The Court ordered Respondent to comply with informal probation for three years with terms and conditions regarding the use of alcohol, unauthorized drugs, narcotics, and controlled substances. The Court ordered Respondent to complete a first-offender alcohol program, pay fines and fees, and complete forty hours of community service. Respondent never reported the arrest or conviction to the Board.

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[1] Trintellix is an antidepressant used to treat major depressive disorder with adults.

[2] Phencyclidine (PCP) also known as angel dust, is a mind-altering drug that may lead to hallucinations. PCP is addictive and its use often leads to psychological dependence, craving, and compulsive PCP-seeking behavior. PCP is a Schedule II drug. The lingering effects of PCP can be felt in the system from one to two days after use.

24. In December of 2022, Stockdale Podiatry began to receive complaints from patients about Respondent's conduct. Patients complained to staff that he was making statements to patients not related to patient care, repeating questions to patients, yelling at patients, appearing intoxicated or under the influence of drugs, and parents of pediatric patients expressed concern for the safety of their children when treated by Respondent.

25. On or about December 21, 2022, Respondent denied using drugs and left the office without completing patient chart dictation.

26. On or about January 12, 2023, Respondent entered Stockdale Podiatry in the middle of the night and triggered the alarm. The clinic reviewed the security footage, but they were unable to determine if Respondent took anything from the clinic during the night.

27. On or about January 13, 2023, investigators attempted to contact Respondent in person at his address of record. Respondent was not present and investigators learned that investors had recently purchased the property.

28. On January 21, 2023, investigators mailed communications to Respondent's address of record with the Board requesting that he consent to a mental examination, physical examination, and provide a urine sample.

29. On or about January 24, 2023, investigators sent communications to Respondent at his addresses in Long Beach and Bakersfield, unaware which, if any, of the addresses were current.

30. On or about January 25, 2023, Respondent met with an investigator and provided a voluntary urine sample. The sample was negative for the presence of illegal drugs. Respondent signed a Voluntary Agreement for Mental Examination to be conducted by a board-certified psychiatrist.

31. On or about February 3, 2023, at approximately 8:11 PM, Respondent was walking along I-5 southbound waving a flashlight and appearing distressed. Witnesses called 911 to alert law enforcement to the situation. Officers found the rear hatch of his vehicle open, and moving boxes on the ground at the rear of the vehicle, but did not see anyone near the car. Respondent called 911 and said, "Everyone is dead except a little girl. You have to get here now." Respondent

said he caused a car accident involving a "million trillion vehicles." Officers did not see any crashed cars, but found Respondent's vehicle, and identified Respondent walking and waving up and down a flashlight in a distressed manner. Officers directed Respondent to stop, but he refused and kept walking northbound. Respondent told Officer McGhee that he had "killed everyone." Respondent exhibited rapid speech, heavy breathing, dilated pupils, and was pacing while talking to officers. Respondent admitted that he had used "meth," that the Toyota was his vehicle and said that he killed everyone except for a thirteen-year-old girl who he said was lying in the grass next to the car. The officers did not observe a girl or anyone else in the area. Respondent was arrested and then told officers that he was "going to kill everyone." Respondent said he was on his way to the police station to confess to the killings when his vehicle ran out of gas. Respondent later admitted that he had driven while high. Officers did not find any accident or any injured persons nearby. Respondent answered Pre Field Sobriety Test questions, but was unable to safely complete field sobriety testing. Respondent was arrested, and taken to the hospital for a blood test. At the hospital, Respondent stated he was a pedophile but it was okay because "she was a seventeen-year-old" and he never touched her. The blood test revealed that Respondent was positive for amphetamine and methamphetamine.

32. On or about February 22, 2022, Respondent presented to Aspire Counseling Center for Treatment. Respondent admitted that he last snorted 1-2 lines of methamphetamine on December 18, 2022. Respondent stated that he had been using methamphetamine for twelve years, and first used the drug at age 20. Respondent stated that his longest period of sobriety was twenty-five years and his main concern for relapse is the risk of losing his job. Aspire assessed that Respondent is a risk for relapse as he lives alone, and has no positive support. Respondent falsely told Aspire that he had never been arrested and that he was not on any probation or parole. Respondent expressed significant concern for relapse, and stated that his boss had confronted him about his behavior. Aspire diagnosed Respondent with amphetamine-type substances abuse disorder, moderate or severe. Respondent stated that his use "is affecting my life and my job," and that he had received therapy or substance abuse before "many times." Respondent was

scheduled to participate in weekly clinical group meetings and personal counseling, but he did not attend all sessions.

33. On or about March 20, 2023, Respondent's attorney stated that Respondent is working six days per week for 48 hours per week at Watts Healthcare, located at 10300 Compton Blvd, Los Angeles, CA 90002. However, Respondent had not worked for the prior two weeks due to his health. Respondent did not provide any clarification regarding the nature of the health problem leading to his absence from work.

34. On or about April 6, 2023[3], a board-appointed psychiatrist conducted a mental health examination with the goal of determining whether Respondent was safe to practice medicine. Respondent acknowledged that he had received past treatment for depression and anxiety. Respondent first denied that he had a problem with methamphetamine, denied that he had ever been arrested, and later stated that he had only ever used methamphetamine a single time. Respondent's answers appeared to be untruthful based on the evidence available and did not reflect a recognition of a serious addiction problem affecting his ability to practice. Respondent did not demonstrate any understanding of his addiction to methamphetamine. The Board's expert reviewed Respondent's medical and psychiatric records and diagnosed Respondent with stimulant use disorder, moderate, Amphetamine-Type Substance in accordance with the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5). Respondent failed to seek medical care, per the treatment records, except to comply with external requirements imposed by his employer to keep his job. The psychiatrist concluded that Respondent is currently unsafe to practice medicine safely without endangering the public.

35. On or about May 5, 2023, an ex Parte Interim Suspension Order (ISO) hearing was held. Respondent was represented by counsel, but did not attend the hearing.

36. On or about May 8, 2023, an Ex Parte ISO was granted, and an order was issued immediately suspending Respondent's license, and a noticed ISO hearing was set for May 25, 2023.

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[3] Respondent originally agreed to participate in voluntary mental health examination on March 2, 2023; but he failed to appear for the examination.

37. On or about May 25, 2023, a noticed ISO hearing was held. Respondent was represented by counsel, but did not attend in person. Respondent did not submit any evidence at the hearing.

38. On or about June 5, 2023, an Order was issued by the Office of Administrative Hearings in OAH Case No. 2023050148 granting the ISO. Respondent's license No. E-4434 was suspended until a final decision on an Accusation is rendered.

**FIRST CAUSE FOR DISCIPLINE**

**(Ability to Practice Safely Impaired)**

39. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 822, in that his ability to practice his profession safely is impaired due to mental illness, or physical illness affecting competency. The circumstances are set forth in paragraphs 23 through 38, which are hereby incorporated by reference and realleged as if fully set forth herein.

**SECOND CAUSE FOR DISCIPLINE**

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

40. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 2227, as defined by section 2236, of the Code, in that he was convicted of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged in paragraphs 23 through 38, which are hereby incorporated by reference and realleged as if fully set forth herein.

**THIRD CAUSE FOR DISCIPLINE**

**(Drug Related Conviction)**

41. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 2227, as defined by section 2237, of the Code, in that he was convicted of a charge of violating a federal statutes or regulations or a statute or regulation of this state, regulating dangerous drugs or controlled substances, which constitutes unprofessional

conduct, as more particularly alleged in paragraphs 23 through 38, which are hereby incorporated by reference and realleged as if fully set forth herein.

**FOURTH CAUSE FOR DISCIPLINE**

**(Excessive Use of Drugs or Alcohol)**

42. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 2227, as defined by section 2239, of the Code, in that he used or prescribed or administered to himself a controlled substance in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely, or more than one misdemeanor or felony involving the use, consumption, or self-administration of a controlled substance, which constitutes unprofessional conduct, as more particularly alleged in paragraphs 23 through 38, which are hereby incorporated by reference and realleged as if fully set forth herein.

**FIFTH CAUSE FOR DISCIPLINE**

**(Violation of Statute or Regulation Involving Drugs or Alcohol)**

43. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 2227, as defined by section 2238, of the Code, in that he violated a federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances, as more particularly alleged in paragraphs 23 through 38, which are hereby incorporated by reference and realleged as if fully set forth herein.

**SIXTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct)**

44. Respondent has subjected his Doctor of Podiatric Medicine License Number E-4434 to disciplinary action under section 2227, as defined by section 2234, subdivision (a), of the Code, in that he engaged in unprofessional conduct, as more particularly alleged in paragraphs 23 through 41, which are hereby incorporated by reference and realleged as if fully set forth herein.

(a) Respondent failed to report a misdemeanor conviction as required by Section 802.1, which constitutes unprofessional conduct.

(b) Respondent failed to provide a change of address to the Board within 30 days of change as required by Section 2021, which constitutes unprofessional conduct.

**DISCIPLINE CONSIDERATIONS**

45. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that:

(a) On or about May 16, 2022, in a prior criminal proceeding titled People of the State of California vs. James Francis Brown in Orange Superior Court, Case Number 20WM06029, Respondent was convicted of violating Vehicle Code section 23152, subdivision (f); and Vehicle Code section 14601.1, subdivision (a), both misdemeanors, and was ordered to complete three years probation with terms and conditions regarding the use of alcohol, unauthorized drugs, narcotics, and controlled substances. Respondent was ordered to complete a first-offender alcohol program, pay fines and fees, and complete forty hours of community service. The record of the criminal proceeding is final.

(b) On or about March 21, 2023, in a criminal proceeding titled People of the State of California vs. James Francis Brown in Kern Superior Court, Case Number LM126533A. Respondent was charged with violating Vehicle Code section 23152, subdivision (f).

**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 E-4434, issued to JAMES FRANCIS BROWN, D.P.M.;

2. Ordering James Francis Brown, D.P.M., to pay the Podiatric Medical Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. Ordering James Francis Brown, D.P.M., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.5; and

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

DATED: 06/23/2023

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

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