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

In the Matter of the Accusation Against:	)	
	)	
	)	
STANLEY LOWE, D.P.M.	)	Case No. 500-2016-000461
	)	
Doctor of Podiatric Medicine	)	
License No. E 3480	)	
	)	
Respondent.	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Podiatric Medical Board of California, 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 November 20, 2019.

IT IS SO ORDERED: October 21, 2019.

PODIATRIC MEDICAL BOARD OF CALIFORNIA

Judith Manzi, D.P.M., President

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
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: STANLEY LOWE, D.P.M. 1280 Huntington Drive San Marino, California 91108 Doctor of Podiatric Medicine License No. E 3480, Respondent.	Case No. 500-2016-000461 OAH No. 2019031092 **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 Xavier Becerra, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

2. Stanley Lowe, D.P.M. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is: 5440 Trabuco Road, Irvine, California 92620.

3. On August 24, 1987, the Board issued Doctor of Podiatric Medicine License No. E 3480 to Stanley Lowe, D.P.M. (Respondent). That license was in full force and effect at all

times relevant to the charges brought in Accusation No. 500-2016-000461, and will expire on March 31, 2021, unless renewed.

JURISDICTION

Accusation No. 500-2016-000461 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 February 21, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 500-2016-000461 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 500-2016-000461. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. 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.

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 500-2016-000461, if proven at a hearing, constitute cause for imposing discipline upon his Doctor of Podiatric Medicine License.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima

facie case for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. 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.

11. Respondent agrees that if he ever petitions for early termination of probation or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 500-2016-000461, shall be deemed true, correct and fully admitted by Respondent for purpose of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

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

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Doctor of Podiatric Medicine License No. E 3480 issued to Respondent Stanley Lowe, D.P.M. is publicly reprimanded pursuant to Business and Professions Code section 2227. This public reprimand is issued in connection with Respondent's actions as set forth in Accusation No 500-2016-000461.

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. 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 full amount of $13,132.50 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.

3. VIOLATION OF THIS AGREEMENT. Failure to fully comply with any term or condition of this agreement is unprofessional conduct. If Respondent violates this agreement in any respect, the Board may reinstate the accusation and/or file an amended accusation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon. 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: 9/13/19

STANLEY LOWE, D.P.M.
Respondent

I have read and fully discussed with Respondent Stanley Lowe, 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: September 13, 2019

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

DATED: 9/13/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 500-2016-000461

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 21 2019
BY Sura Prasad ANALYST

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

In the Matter of the Accusation Against: **STANLEY LOWE, D.P.M.** **1280 Huntington Drive** **San Marino, California 91108** **Podiatrist License No. D.P.M 3480,** Respondent.	Case No. 500-2016-000461 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Brian Naslund (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine (Board).

2. On August 24, 1987, the Board issued Podiatrist License Number DPM 3480 to Stanley Lowe, D.P.M. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2019, 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 physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

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

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

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.

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

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. 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.'

8. Section 2472 of the Code states:

'(a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine.

'(b) As used in this chapter, 'podiatric medicine' means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and

tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.

'(c) A doctor of podiatric medicine may not administer an anesthetic other than local. If an anesthetic other than local is required for any procedure, the anesthetic shall be administered by another licensed health care practitioner who is authorized to administer the required anesthetic within the scope of his or her practice.

'(d)(1) A doctor of podiatric medicine who is ankle certified by the board on and after January 1, 1984, may do the following:

'(A) Perform surgical treatment of the ankle and tendons at the level of the ankle pursuant to subdivision (e).

'(B) Perform services under the direct supervision of a physician and surgeon, as an assistant at surgery, in surgical procedures that are otherwise beyond the scope of practice of a doctor of podiatric medicine.

'(C) Perform a partial amputation of the foot no further proximal than the Chopart's joint.

'(2) Nothing in this subdivision shall be construed to permit a doctor of podiatric medicine to function as a primary surgeon for any procedure beyond his or her scope of practice.

'(e) A doctor of podiatric medicine may perform surgical treatment of the ankle and tendons at the level of the ankle only in the following locations:

'(1) A licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

'(2) A licensed surgical clinic, as defined in Section 1204 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in subparagraph (1) and meets all the protocols of the surgical clinic.

'(3) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the

ankle, in a general acute care hospital described in paragraph (1) and meets all the protocols of the surgical center.

'(4) A freestanding physical plant housing outpatient services of a licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1). For purposes of this section, a 'freestanding physical plant' means any building that is not physically attached to a building where inpatient services are provided.

'(5) An outpatient setting accredited pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.'

COST RECOVERY

9. Section 2497.5 of the Code states:

'(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay 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.'

CASE SUMMARY

10. This case involves an insulin-dependent diabetic patient (hereinafter "the Patient") with a Charcot collapse[1] and dislocation of his left foot. He was evaluated preoperatively by Respondent.

11. On November 30, 2016, Respondent performed surgery on Patient. Respondent was assisted by J.N.,[2] DPM and by K.C., D.P.M, a first-year resident. The five-hour surgery involved open reduction and internal fixation of mid-foot fractures and Charcot degeneration. At the conclusion of the case, Respondent opted to place an external fixation frame, due to perceived instability of the fracture sites.

12. Respondent was unfamiliar with the external fixation frame. During the placing of the external fixation frame, Respondent inserted the anchoring distal pins into the Patient's soft tissue, instead of the calcaneus (bone). Both J.N. and K.C. related this information to Respondent during the procedure. Respondent dismissed their concerns.

13. Respondent used intraoperative x-rays, to confirm pin placement. Respondent did not use fluoroscopy or arthroscopy (direct visualization). Postoperative X-rays read by a radiologist, Dr. R., on November 30, 2016, confirmed that the distal pins were not within the bone. This rendered the external fixation frame non-functional. The middle securing pins were observed.

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[1] Charcot foot is a condition causing weakening of the bones in the foot that can occur in people who have significant nerve damage (neuropathy). The bones are weakened enough to fracture, and with continued walking, the foot eventually changes shape. As the disorder progresses, the joints collapse and the foot takes on an abnormal shape, such as a rocker-bottom appearance. Charcot foot is a serious condition that can lead to severe deformity, disability and even amputation.

[2] Names are reduced to initials for privacy.

The radiologist also suspected that at least one of the two middle securing pins were outside of the tibia, in the anterior pretibial soft tissue. The Patient subsequently returned to the hospital for corrective surgery to correct the issues from the surgery performed by Respondent.

14. The standard of care requires that the surgeon be competent and knowledgeable regarding the use of fixation devices, and their application to achieve the intended surgical result.

15. The standard of care dictates that the surgeon must confirm the proper placement and stability of the hardware. This should be done by using imaging or under direct visualization (arthroscopy[3]). The utilization of fixation hardware in surgery demands substantive knowledge about principles of fixation and the materials, including the use of pins.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

16. By reason of the facts and circumstances alleged above in paragraphs 10 through 14, Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he was grossly negligent in his care and treatment of the Patient. The circumstances are as follows:

A. Respondent failed to properly perform open reduction and fixation.

B. Respondent failed to understand and to utilize fixation devices properly.

C. Respondent failed to perform the proper protocol to determine stability of surgical site.

D. Respondent failed to obtain intraoperative evidence to confirm if there was proper pin placement, specifically by use of fluoroscopy.

E. Respondent failed to consider the observations of assistant surgeons and the radiologist regarding the placement of the external fixation frame and the pins.

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[3] Arthroscopy is a procedure for diagnosing and treating joint problems by which a surgeon inserts a narrow tube attached to a fiber-optic video camera through a small incision. The view inside the joint is then `transmitted to a high-definition video monitor.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. By reason of the facts set forth above, Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code for repeated negligent acts in the care of the Patient.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. By reason of the facts set forth above, Respondent is subject to disciplinary action under section 2234 of the Code for unprofessional conduct relating to his care and treatment of the Patient.

PRAYER

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

1. Revoking or suspending Podiatrist License Number DPM 3480, issued to Stanley Lowe, D.P.M.;

2. Ordering him to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. If placed on probation, ordering him to pay the Board of Podiatric Medicine the probation monitoring, if placed on probation; and

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

DATED: February 21, 2019

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

Complainant

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