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

In the Matter of the Accusation Against: **Leonard Robert Wagner, D.P.M.** 4955 Van Nuys Blvd., Suite 107 Sherman Oaks, CA 91403 **Doctor of Podiatric Medicine License No. DPM 1949,** Respondent.	Case No. 500-2017-000597 **A C C U S A T I O N**

PARTIES

1. Brian Naslund (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Podiatric Medical Board, Department of Consumer Affairs (Board).

2. On June 1, 1976, the Board issued Doctor of Podiatric Medicine License Number DPM 1949 to Leonard Robert Wagner, D.P.M. (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2022, 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.
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> 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:
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> (1) Have his or her license revoked upon order of the board.
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> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
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> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
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> (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.
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> (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.
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> (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 2228.5 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 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.

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.

STATUTORY PROVISIONS

8. 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.

. . .

9. Section 2242 states, in pertinent part, that "[p]rescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct."

10. Section 2266 of the Code states that the failure of a physician to maintain adequate and accurate records relating to the provision of services to his patients constitutes unprofessional conduct.

11. Section 822 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:
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> (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.
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> The licensing agency 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.

COST RECOVERY

12. 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.
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> (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.
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> (c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

FACTUAL ALLEGATIONS

Patient P-1

13. Respondent treated patient P-1,[1] who was 44-years old when she began treatment, from April 15, 2015, through September 22, 2017. The patient complained of painful plantar fasciitis in her right foot. According to his records, Respondent treated her by injecting the patient's right heel with cortisone at each of her first 22 visits, through November 19, 2015. This was an excessive and unsafe number of cortisone injections. The standard of care for treatment of plantar fasciitis includes stretching, ice, massage, use of a night splint, orthotics, shoe changes, formal physical therapy, and local cortisone injections, including three injections over a three- to six-month period. If this initial treatment fails, the standard of care calls for surgery.

14. On March 15, 2016, the patient also complained of pain in her left big toe, which Respondent diagnosed as an ingrown toenail. At her subsequent visits, the patient complained of pain in this toe and in several of her other toes. Respondent diagnosed her with and treated her for ingrown toenails, including repeated treatment of the same toenails. Respondent failed to consider and recommend permanent nail margin removal, a surgical procedure that would have resolved the patient's repeated ingrown toenails. By delaying a permanent solution to her condition,

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[1] The patients are designated in this document as P-1 through P-3 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

Respondent placed the patient at a greater risk for complications from the procedure, stemming from her advancing age. This delay also risked the chance that the patient might not be a candidate for the procedure in the future.

15. During his treatment of P-1, Respondent regularly prescribed her narcotic pain medication, including 51 prescriptions of 60 tablets of 10/325 mg hydrocodone bitartrate with acetaminophen[2] ("hydrocodone-acetaminophen"). The quantity of narcotics prescribed by Respondent was excessive and unnecessary for treatment of this patient's plantar fasciitis and ingrown toenails.

16. Respondent did not document an indication, including objective findings, for prescribing the patient narcotics, particularly in this quantity or for this duration, rather than a non-narcotic analgesic. Nor did Respondent document the patient's response to the medication. In addition, Respondent did not enter into a contract with the patient regulating her use of narcotics or require any monitoring or testing to confirm that she did not become addicted to or abuse her medication.

17. Most of Respondent's documentation of the patient's visits is cut and pasted from previous visits, verbatim. For example, Respondent documents the following quote of the patient's description at each of her visits, over the two years that he treated her: "Patient 'feels well today' and is in no apparent distress." Respondent's physical examination results are likewise nearly identical for each visit. Respondent reports, for example, the same respiratory rate and pulse month after month, and repeating descriptions of the patient, such as, "Patient is alert and oriented times 3 and has a pleasant disposition."

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[2] Hydrocodone-acetaminophen (trade names of which include Norco®) is a combination of two pain medications: hydrocodone bitartrate, a semisynthetic narcotic, and acetaminophen (trade names of which include Tylenol®). Effective October 6, 2014, the Drug Enforcement Administration (DEA) placed hydrocodone-acetaminophen on Schedule II of the Controlled Substances Act pursuant to title 21 of the Code of Federal Regulations, section 1308.12, subdivision (b)(1)(vi). The DEA had previously classified it as a Schedule III controlled substance. Hydrocodone-acetaminophen is a dangerous drug as defined in Code section 4022, and a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e).

18. Respondent documents providing physical therapy to the patient at each visit, but his records do not describe the patient's response to the therapy, the goals for her therapy, or whether the goals were being met.

Patient P-2

19. Respondent treated patient P-2, who was 43-years old when he began treatment, from October 4, 2014, through August 11, 2017. P-2 presented with a complaint of pain in his left foot. At subsequent visits, the patient additionally complained of pain in several of his toes. Respondent diagnosed him with foot pain, neuritis, bursitis, and ingrown toenails, among other conditions. Respondent also diagnosed the patient with "acute pain" at every one of his visits.

20. Throughout his treatment, Respondent documented that P-2 continued to complain of the same "up to 6 out of 10" level of pain, noting no improvement in the patient's conditions or any subsiding of pain. Meanwhile, Respondent continued to regularly prescribe the patient the same quantity and strength of pain medication: 60 tablets of 10/325 mg hydrocodone-acetaminophen, totaling 78 of such prescriptions over the course of his treatment. The quantity of narcotics prescribed by Respondent was excessive and unnecessary for treatment of this patient's conditions.

21. Respondent did not document an indication, including objective findings, for prescribing the patient narcotics, particularly in this quantity or for this duration, rather than a non-narcotic analgesic. Nor did Respondent document the patient's response to the medication. In addition, Respondent did not enter into a contract with the patient regulating his use of narcotics or require any monitoring or testing to confirm that he did not become addicted to or abuse his medication.

22. Most of Respondent's documentation of the patient's visits is cut and pasted from previous visits, verbatim. For example, for each of his visits, Respondent documented, "Patient relates pain up to 6 of 10. Patient 'feels well today' and is in no apparent distress." Likewise, Respondent's findings from his physical examination and his treatment plan remain virtually unchanged from visit to visit.

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23. Respondent documents providing physical therapy to the patient at each visit, but his records do not describe the patient's response to the therapy, the goals for his therapy, or whether the goals were being met.

Patient P-3

24. Respondent treated patient P-3, who was 39-years old when he began treatment, from October 6, 2014, through September 15, 2017. P-3 presented with a chief complaint of pain in his left foot and ankle. At subsequent visits, the patient complained of pain in several of his toes, sometimes also renewing his complaint of pain in his left foot and ankle, and sometimes omitting it. The level of pain reported by P-3 varied from 3 out of 10 to 10 out of 10. Respondent diagnosed the patient with foot pain, a "sprain ankle fracture," and plantar fasciitis, among other conditions.

25. At his initial visit, Respondent documented that P-3 was already taking "large doses of [N]orco."[3] Respondent also documented, according to the patient's insurance company, that the patient was already being prescribed pain medication from six other physicians. Respondent did not document making any effort to confirm the type and quantity of pain medications that P-3's other providers were prescribing him, or coordinating P-3's other pain medications with those that he prescribed.

26. During his treatment of P-3, Respondent regularly prescribed him narcotic pain medication, including 76 prescriptions for 60 tablets of 10/325 mg hydrocodone-acetaminophen. The quantity of narcotics prescribed by Respondent was excessive and unnecessary for treatment of this patient's conditions.

27. Respondent did not document an indication, including objective findings, for prescribing the patient narcotics, particularly in this quantity or for this duration, rather than a non-narcotic analgesic. Nor did Respondent document the patient's response to the medication. In addition, Respondent did not enter into a contract with the patient regulating his use of narcotics or require any monitoring or testing to confirm that he did not become addicted to or abuse his medication.

[3] Norco® is a trade name for hydrocodone-acetaminophen.

28. At P-3's first visit, Respondent documented, "patient told again to go see a pain management Dr." Respondent copied and pasted this same sentence in his records for most of the patient's subsequent visits. Respondent's records do not indicate that the patient complied with his recommendation that he seek treatment from a pain management specialist or whether Respondent took any further steps to facilitate this.

29. Most of Respondent's documentation of the patient's visits is cut and pasted from previous visits, verbatim. For example, for each of his visits, Respondent documented, "Patient 'feels well today' and is in no apparent distress." Likewise, Respondent's findings from his physical examination and his treatment plan remain virtually unchanged from visit to visit.

30. Respondent documents providing physical therapy to the patient at many of his visits, but his records do not describe the patient's response to the therapy, the goals for his therapy, or whether the goals were being met.

Non-Cooperation with Inquiring Pharmacist

31. Respondent's excessive prescribing of pain medication caught the attention of a concerned pharmacist at one of the pharmacies where his patients filled their medications. The pharmacist telephoned Respondent on three occasions to confirm the diagnosis underlying his prescriptions. Respondent refused to share his diagnosis with the pharmacist, and during one phone call told her, "You don't need to know that information; just fill the prescription." The pharmacist thereafter refused to fill prescriptions written by Respondent.

32. The standard of care for a prescribing podiatrist was to discuss a patient's case with an inquiring pharmacist, including diagnoses, prescriptions, and allergies. This is in the patient's interest, to avoid conflicting medications, to reduce mistakes in medications, and to be certain that the patient is not abusing dangerous drugs or receiving them from multiple sources unbeknownst to the patient's prescribers.

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Physical Illness Affecting Respondent's Competency

33. On January 22, 2019, an investigator conducted an interview of Respondent on behalf of the Board regarding the allegations underlying this pleading. Shortly after the interview began, Respondent ended it early, as he was feeling ill. The investigator noted that Respondent appeared frail, used a walking cane, and was wearing a nasal oxygen cannula.

34. Respondent agreed to a physical examination to determine whether he was able to practice medicine safely. A physician examined Respondent, on May 18, 2019, and concluded that Respondent's physical limitations—including problems with his spine, back pain, back spasms, scoliosis, and severe kyphosis—impair his ability to stand, walk, bend, twist, or to engage in other positions and motions needed to perform surgery. As a result of Respondent's immobility, the evaluating physician concluded that Respondent is not able to safely perform prolonged surgeries, or any surgeries that require standing.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

35. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, because he engaged in the following acts of gross negligence in the care and treatment of patients, as alleged above:

A. Respondent's treatment of P-1's plantar fasciitis by injecting the patient's right heel with cortisone at each of her 22 visits, from April 15, 2015, through November 19, 2015, was excessive and unsafe, and constitutes an extreme departure from the standard of care.

B. Respondent's failure to consider and recommend permanent nail margin removal to resolve P-1's' repeated ingrown toenails was an extreme departure from the standard of care.

C. Respondent's regular prescribing of hydrocodone-acetaminophen throughout his treatment of P-1, without considering and recommending a non-narcotic analgesic, was an extreme departure from the standard of care. Respondent's failure to document an indication for prescribing narcotics or the patient's response to the medication, and his

failure to enter into a contract with the patient regulating her use of narcotics or to require any monitoring or testing to confirm that she not become addicted to or abuse her medication, further supports this departure.

D. Respondent's regular prescribing of hydrocodone-acetaminophen throughout his treatment of P-2, without considering and recommending a non-narcotic analgesic, was an extreme departure from the standard of care. Respondent's failure to document an indication for prescribing narcotics or the patient's response to the medication, and his failure to enter into a contract with the patient regulating his use of narcotics or to require any monitoring or testing to confirm that he not become addicted to or abuse his medication, further supports this departure.

E. Respondent's regular prescribing of hydrocodone-acetaminophen throughout his treatment of P-3, without considering and recommending a non-narcotic analgesic, was an extreme departure from the standard of care. Respondent's failure to document an indication for prescribing narcotics or the patient's response to the medication, and his failure to enter into a contract with the patient regulating his use of narcotics or to require any monitoring or testing to confirm that he not become addicted to or abuse his medication, further supports this departure. Respondent's failure to document any effort to confirm the type and quantity of pain medications that P-3's other providers were prescribing him, or to coordinate P-3's other pain medications with those that he prescribed also supports this departure.

F. Respondent's failure to maintain adequate and accurate records for his treatment of P-1, P-2, or P-3 constitutes an extreme departure from the standard of care.

G. Respondent's refusal to discuss his patient's prescriptions with an inquiring pharmacist charged with filling the prescriptions was an extreme departure from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

36. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, because he engaged in repeated negligent acts in his care and treatment of patients P-1, P-2, and P-3. These acts include those alleged in the First Cause for Discipline.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without a Prior Examination and Medical Indication)

37. Respondent is subject to disciplinary action under section 2242 of the Code, because he prescribed dangerous drugs as defined in section 4022 of the Code to patients P-1, P-2, and P-3 without an appropriate prior examination and a medical indication, as alleged above.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Records)

38. Respondent is subject to disciplinary action under section 2266 of the Code, because he failed to maintain adequate and accurate records of the medical services that he provided to patients P-1, P-2, and P-3, as alleged above.

FIFTH CAUSE FOR DISCIPLINE

(Physical Illness Affecting Competency)

39. Respondent is subject to disciplinary action and practice restriction under section 822 of the Code, because his immobility impairs his ability to practice podiatry safely and constitutes physical illness affecting his competency, as alleged above.

PRAYER

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

1. Revoking or suspending Doctor of Podiatric Medicine License Number DPM 1949, issued to Leonard Robert Wagner, D.P.M.;

2. Ordering Leonard Robert Wagner, D.P.M. to pay the actual and reasonable costs of the investigation and prosecution of the case, pursuant to Business and Professions Code section 2497.5;

3. Revoking, suspending, or denying approval of Leonard Robert Wagner, D.P.M.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Leonard Robert Wagner, D.P.M., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: SEP 15 2020

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

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