

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

**In the Matter of the Accusation
against:**

WENJAY SUNG, DPM

**Doctor of Podiatric Medicine
License No. E-5032**

Respondent

File No: 500-2018-000667

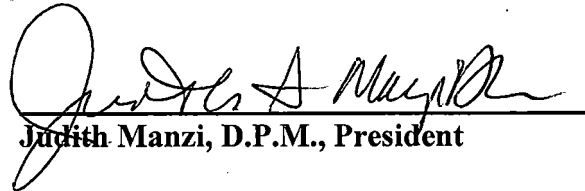
DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on OCT 23 2020

IT IS SO ORDERED SEP 25 2020

PODIATRIC MEDICAL BOARD


Judith Manzi, D.P.M., President

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Attorney General of California
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Supervising Deputy Attorney General
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9
10 **BEFORE THE**
11 **PODIATRIC MEDICAL BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 **WENJAY SUNG, D.P.M.**
16 **301 W Huntington Drive, Suite 300**
Arcadia, CA 91007-3462

17 **Podiatric License No. E 5032**

18 Respondent.

Case No. 500-2018-000667

OAH No. 2019120130

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Brian Naslund (Complainant) is the Executive Officer of the Podiatric Medical Board
24 (Board). He brought this action solely in his official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Martin W. Hagan, Deputy
26 Attorney General.

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2. Wenjay Sung, D.P.M. (Respondent) is represented in this proceeding by Peter R. Osinoff, Esq., whose address is Bonne Bridges Mueller O’Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071.

3. On October 15, 2012, the Board issued Podiatric License No. E 5032 to Respondent. The Podiatric License was in full force and effect at all times relevant to the charges brought in Accusation No. 500-2018-000667, and will expire on August 31, 2022, unless renewed.

JURISDICTION

4. On August 21, 2019, Accusation No. 500-2018-000667 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 500-2018-000667 is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 500-2018-000667. 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.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 500-2018-000667, if proven at a hearing, constitute cause for imposing discipline upon his Podiatric License. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

9. Respondent further agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition for revocation of probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 500-2018-000667 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

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

CONTINGENCY

11. 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.

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12. 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.

13. 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 Podiatric License No. E 5032 issued to Respondent Wenjay Sung, D.P.M. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

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

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

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have

1 been approved by the Board or its designee had the course been taken after the effective date of
2 this Decision. Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the course, or not later than
4 15 calendar days after the effective date of the Decision, whichever is later.

5 3. **ETHICS COURSE:** Within 60 days of the effective date of this Decision,
6 respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the
7 Board or its designee. Failure to successfully complete the course during the first year is a
8 violation of probation. An ethics course taken after the acts that gave rise to the charges in the
9 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
10 or its designee, be accepted towards the fulfillment of this condition if the course would have
11 been approved by the Board or its designee had the course been taken after the effective date of
12 this Decision. Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after the effective date of the Decision.

14 4. **MONITORING – PRACTICE:** Within thirty (30) calendar days of the effective
15 date of this Decision, respondent's practice shall be monitored by a Board-approved monitor.
16 Respondent shall pay all monitoring costs.

17 The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor
18 of podiatric medicine from its panel of medical consultants or panel of expert reviewers as the
19 monitor. The monitor shall have no financial, business, personal, or familial relationship with
20 respondent within the last five (5) years, or other relationship that could reasonably be expected
21 to compromise the ability of the monitor to render fair and unbiased reports to the Board, shall be
22 in respondent's field of practice, and must agree to serve as respondent's monitor. If it is
23 impractical for anyone but respondent's employer to serve as the worksite monitor, this
24 requirement maybe waived by the Board; however, under no circumstances shall respondent's
25 worksite monitor be an employee of respondent.

26 The monitor shall provide quarterly reports to the Board or its designee that includes an
27 evaluation of respondent's performance, indicating whether respondent's practices are within the
28 standards of practice of podiatric medicine and whether respondent is practicing podiatric

1 medicine safely. It shall be the sole responsibility of respondent to ensure that the monitor
2 submits the quarterly written reports to the Board or its designee within ten (10) calendar days
3 after the end of the preceding quarter.

4 The Board or its designee shall determine the frequency and practice areas to be monitored.
5 Such monitoring shall be required during the entire period of probation. The Board or its designee
6 may at its sole discretion also require prior approval by the monitor of any medical or surgical
7 procedures engaged in by respondent.

8 The Board or its designee shall provide the approved monitor with copies of the
9 Decision(s), Accusation(s), Statement of Issues, or Stipulated Settlement, and a proposed
10 monitoring plan. Within fifteen (15) calendar days of receipt of these documents, the monitor
11 shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s),
12 Statement of Issues, or Stipulated Settlement, fully understands the role of a monitor, and agrees
13 or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed
14 monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for
15 approval by the Board or its designee.

16 If the monitor resigns or is no longer available, respondent shall immediately notify the
17 Board or its designee of the termination. The Board or its designee shall appoint a new monitor as
18 soon as feasible. Respondent shall not practice at any time during the probation until respondent
19 provides a copy of the contract with the current monitor to the probation monitor and such
20 contract is approved by the Board. Failure to maintain all records, or to make all appropriate
21 records available for immediate inspection and copying on the premises, or to comply with this
22 condition as outlined above is a violation of probation.

23 In lieu of a monitor, respondent may participate in the professional enhancement program
24 approved in advance by the Board or its designee that includes, at a minimum, quarterly chart
25 review, semi-annual practice assessment, and semi-annual review of professional growth and
26 education. Respondent shall participate in the professional enhancement program at respondent's
27 expense during the term of probation.

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

16 6. **NOTIFICATION:** Prior to engaging in the practice of medicine, the respondent
17 shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief
18 Executive Officer at every hospital where privileges or membership are extended to respondent,
19 at any other facility where respondent engages in the practice of podiatric medicine, including all
20 physician and locum tenens registries or other similar agencies, and to the Chief Executive
21 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
22 Respondent shall submit proof of compliance to the Division or its designee within 15 calendar
23 days. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

24 7. **PHYSICIAN ASSISTANTS:** Prior to receiving assistance from a physician
25 assistant, respondent must notify the supervising physician of the terms and conditions of his/her
26 probation.

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

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

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

13 Respondent shall not engage in the practice of podiatric medicine in respondent's place of
14 residence. Respondent shall maintain a current and renewed California doctor of podiatric
15 medicine's license. Respondent shall immediately inform the Board or its designee, in writing, of
16 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
17 more than 30 calendar days.

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

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

27 All time spent in an intensive training program outside the State of California which has
28 been approved by the Board or its designee shall be considered as time spent in the practice of

1 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
2 period of non-practice. Periods of temporary or permanent residence or practice outside
3 California will not apply to the reduction of the probationary term. Periods of temporary or
4 permanent residence or practice outside California will relieve respondent of the responsibility to
5 comply with the probationary terms and conditions, with the exception of this condition, and the
6 following terms and conditions of probation: Obey All Law; Probation Unit Compliance; and
7 Cost Recovery.

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

14 **13. FAILURE TO PRACTICE PODIATRIC MEDICINE - CALIFORNIA**

15 **RESIDENT:** In the event the respondent resides in the State of California and for any reason
16 respondent stops practicing podiatric medicine in California, respondent shall notify the Board or
17 its designee in writing within 30 calendar days prior to the dates of non-practice and return to
18 practice. Any period of non-practice within California as defined in this condition will not apply
19 to the reduction of the probationary term and does not relieve respondent of the responsibility to
20 comply with the terms and conditions of probation. Non-practice is defined as any period of time
21 exceeding thirty calendar days in which respondent is not engaging in any activities defined in
22 section 2472 of the Business and Professions Code. All time spent in an intensive training
23 program which has been approved by the Board or its designee shall be considered time spent in
24 the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered
25 suspension or in compliance with any other condition of probation shall not be considered a
26 period of non-practice. Respondent's license shall be automatically cancelled if respondent
27 resides in California and for a total of two years, fails to engage in California in any of the
28 activities described in Business and Professions Code section 2472.

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

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

12 16. **COST RECOVERY:** Within 90 calendar days from the effective date of the
13 Decision or other period agreed to by the Board or its designee, respondent shall reimburse the
14 Board the amount of fifteen thousand dollars (\$15,000) for its investigative and prosecution costs.
15 The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent
16 of his/her obligation to reimburse the Board for its costs.

17 17. **LICENSE SURRENDER:** Following the effective date of this Decision, if
18 respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy
19 the terms and conditions of probation, respondent may request the voluntary surrender of
20 respondent's license. The Board reserves the right to evaluate the respondent's request and to
21 exercise its discretion whether to grant the request or to take any other action deemed appropriate
22 and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent
23 shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its
24 designee and respondent shall no longer practice podiatric medicine. Respondent will no longer
25 be subject to the terms and conditions of probation and the surrender of respondent's license shall
26 be deemed disciplinary action. If respondent re-applies for a podiatric medical license, the
27 application shall be treated as a petition for reinstatement of a revoked certificate.

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

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

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

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

20 **ACCEPTANCE**

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it
23 will have on my Podiatric License. I enter into this Stipulated Settlement and Disciplinary Order
24 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
25 Podiatric Medical Board.

26
27 DATED: 7/29/20

28 
WEN-YAY SUNG, D.P.M.
Respondent

1 I have read and fully discussed with Respondent Wenjay Sung, D.P.M., the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve of its form and content.

4 DATED: 7/31/2020


PETER R. OSINOFF, ESQ.
Attorney for Respondent

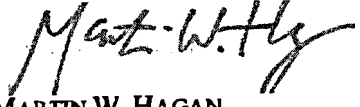
7 **ENDORSEMENT**

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

10 DATED: July 31, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

18 SD2019701549
82446998.docx

Exhibit A

Accusation No. 500-2018-000667

1 XAVIER BECERRA
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 21, 2019
BY: Patricia A. Anglin ANALYST

10 **BEFORE THE**
11 **PODIATRIC MEDICAL BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
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13 In the Matter of the Accusation Against:

Case No. 500-2018-000667

14 **Wenjay Sung, D.P.M.**
15 **301 W HUNTINGTON DR, SUITE 300**
ARCADIA CA 91007-3462

A C C U S A T I O N

16 **Podiatric License No. E 5032,**

17 Respondent.

18
19 **PARTIES**

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

22 2. On or about October 15, 2012, the Podiatric Medical Board issued Podiatric License
23 Number E 5032 to Wenjay Sung, D.P.M. (Respondent). The Podiatric License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on August 31, 2020,
25 unless renewed.

26 ////

27 ////

28 ////

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

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

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

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

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

11 “”

12 6. Section 2497 of the Code states:

13 “(a) The board may order the denial of an application for, or the suspension
14 of, or the revocation of, or the imposition of probationary conditions upon, a
15 certificate to practice podiatric medicine for any of the causes set forth in Article
16 12 (commencing with Section 2220) in accordance with Section 2222.

17 “(b) The board may hear all matters, including but not limited to, any
18 contested case or may assign any such matters to an administrative law judge. The
19 proceedings shall be held in accordance with Section 2230. If a contested case is
20 heard by the board itself, the administrative law judge who presided at the hearing
21 shall be present during the board’s consideration of the case and shall assist and
22 advise the board.”

23 **STATUTORY PROVISIONS**

24 7. Section 2234 of the Code, states:

25 “The board shall take action against any licensee who is charged with
26 unprofessional conduct. In addition to other provisions of this article,
27 unprofessional conduct includes, but is not limited to, the following:

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1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more
5 negligent acts or omissions. An initial negligent act or omission followed by a
6 separate and distinct departure from the applicable standard of care shall constitute
7 repeated negligent acts

8 “(1) An initial negligent diagnosis followed by an act or omission medically
9 appropriate for that negligent diagnosis of the patient shall constitute a single
10 negligent act.

11 “(2) When the standard of care requires a change in the diagnosis, act, or
12 omission that constitutes the negligent act described in paragraph (1), including, but
13 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
14 licensee’s conduct departs from the applicable standard of care, each departure
15 constitutes a separate and distinct breach of the standard of care.

16 “... ”

17 “(e) The commission of any act of dishonesty or corruption that is
18 substantially related to the qualifications, functions, or duties of a physician and
19 surgeon.

20 “(f) Any action or conduct which would have warranted the denial of a
21 certificate.”

22 8. Section 2261 of the Code states:

23 “Knowingly making or signing any certificate or other document directly or
24 indirectly related to the practice of medicine of podiatry which falsely represents
25 the existence or nonexistence of a state of facts, constitutes unprofessional
26 conduct.”

27 ////

28 ////

1 9. Unprofessional misconduct under California Business and Professions Code
2 section 2234 is conduct which breaches the rules or ethical code of the medical
3 profession, or conduct which is unbecoming to a member in good standing of the
4 medical profession, and which demonstrates an unfitness to practice medicine.
5 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

6 **COST RECOVERY**

7 10. Section 2497.5 of the Code states:

8 “(a) The board may request the administrative law judge, under his or her
9 proposed decision in resolution of a disciplinary proceeding before the board, to
10 direct any licensee found guilty of unprofessional conduct to pay to the board a
11 sum not to exceed the actual and reasonable costs of the investigation and
12 prosecution of the case.

13 “(b) The costs to be assessed shall be fixed by the administrative law judge
14 and shall not be increased by the board unless the board does not adopt a proposed
15 decision and in making its own decision finds grounds for increasing the costs to be
16 assessed, not to exceed the actual and reasonable costs of the investigation and
17 prosecution of the case.

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

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

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

28 ////

“(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.”

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent is subject to disciplinary action under sections 2222, 2227, 2234 and 2497, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of patient A¹, as more particularly alleged hereinafter:

12. On or about January 24, 2017, Respondent had his initial visit with patient A, a then-57-year-old female, who was referred from her primary care physician, for pain in her fourth right toe which had been increasing in severity over time. Patient A reported that she experienced pain wearing closed-toed shoes, she had surgery on her right foot in the past, and she “has tried all treatments” in an attempt to alleviate her toe pain. Respondent’s examination of the right foot was positive for right foot fourth toe joint pain on palpation, negative for soft tissue defects, negative for pain on side-to-side compression, and Respondent noted restricted range of motion of the right midtarsal joints, evidence of crepitis and “hard end feel” of the right foot fourth toe joint and muscle strength of 5/5 for all major muscle groups. Respondent’s assessment was metatarsalgia (pain in the ball of the foot), orbitur nerve palsy, Morton’s neuroma of the right foot and acroosteolysis. Respondent discussed various treatment options and “recommended [she] continue with conservative care and return to Rheumatologist for Raynauld’s [sic] disease [pain in the extremities in response to cold temperatures or stress] treatment” and to return to him on an

¹ Patient A is being used in place of the patient's name or initials to maintain patient confidentiality. Respondent is aware of the identity of the patient referred to herein.

1 as-needed basis. One of the treatment options included ice which was contraindicated for the
2 patient's history and diagnosis of Raynaud's disease.²

3 13. Respondent had a series of follow-up visits with patient A concerning the ongoing
4 pain to her fourth right toe which took place on or about June 6, June 27, July 11, July 18, and
5 July 22, 2017. According to the electronic medical records for these visits, Respondent generally
6 examined patient A and discussed various options including, but not limited to, continuing with
7 conservative treatment and other options, including possible surgery to treat scar tissue, with
8 probable nerve damage. Respondent continued to recommend ice as one of the treatment options
9 which was contraindicated for the patient's history and diagnosis of Raynaud's disease.

10 14. On or about October 10, 2017, Respondent saw patient A for follow-up on her
11 continuing fourth toe pain in her right foot. According to Respondent's medical record for this
12 visit, "Patient [A] elected for syndalcyte of 2nd and 3rd toes to reduce pain to her 4th digit" and
13 there was discussion concerning, among other things, "the surgical procedure itself, the
14 indications, the risks, possible complications and alternative treatments in laymen's terms." The
15 plan, in general, was to fuse the second and third toes (the syndactylization) in an attempt to pull
16 them away from patient A's fourth toe to hopefully alleviate the pain in her fourth toe.

17 15. On or about October 31, 2017, Respondent signed a Surgery Intake Form that was
18 sent to the hospital where the surgery was to be performed which described the procedure as
19 "Right foot syndactylization of second and third toes [and] third metatarsal phalangeal joint
20 capsulotomy."

21 16. On or about November 1, 2017, a Notice of Scheduled Surgical Procedure was
22 prepared by Respondent or his staff and sent to patient A's referring physician requesting a pre-
23 operative history and physical prior to patient A undergoing her scheduled surgery on December
24 26, 2017, which included a "right foot syndactylization of 2nd and 3rd toes..."

25 ////

26 ² Respondent was interviewed as part of an investigation conducted by the Department of
27 Consumer Affairs, Department of Investigation, Health Quality Investigations Unit (HQIU), and
28 was asked about him recommending ice to a patient with a history of Raynaud's disease.
Respondent admitted "that [recommending ice] could be problematic – uh – especially with
somebody with acute Raynaud's." (Respondent's Interview, at p. 31.)

1 17. On or about December 5, 2017, Respondent saw patient A for a Pre-Op visit for her
2 upcoming surgery scheduled for December 26, 2017. According to Respondent's medical record
3 for this visit, "Patient [A] elected for syndalcyte of 2nd and 3rd toes to reduce pain to her 4th
4 digit" and there was discussion concerning, among other things, "the surgical procedure itself, the
5 indications, the risks, possible complications and alternative treatments in laymen's terms." At
6 this visit, patient A executed a "Consent for Foot/Ankle Surgery" which described her surgical
7 procedure as "Syndactylization of the second and third toes right foot [and] Metarso phalangeal
8 joint capsolotomy third toe right foot." Respondent's medical record also contained diagrams of
9 the left and right foot with the diagram of the right foot showing a heavy set of lines drawn on the
10 medial aspect of the third toe, to represent the syndactylization (fusion) of the second and third
11 toes. Patient A's signature was below the diagrams to indicate that "These diagrams were
12 explained to me and I understand them." During his subject interview with a Department of
13 Consumer Affairs; Department of Investigation, Health Quality Investigation Unit (HQUI)
14 investigator, Respondent claimed that prior to the scheduled operation, he "talked about possible
15 operation on the fourth and third toe with or without syndactylization, but it was [a] discussion,
16 not – um – put in writing." Patient A disputes there were any pre-operative discussions about
17 possible syndactylization (fusion) of the third and fourth toes instead of her second and third
18 toes.³

19 18. On or about December 26, 2017, at approximately 10:48 a.m., patient A was admitted
20 to the hospital for her scheduled surgery. Patient A signed a hospital consent form at
21 approximately 11:30 a.m. for her scheduled operation described as "Right foot syndactylization
22 of second and third toes, [and] third metatarsal phalangeal joint capsulotomy." The Preoperative
23 Diagnosis in the Operative Report was noted as "Painful scar tissue with residual deformity of the
24 third and fourth toes, right foot, with history of Raynaud's disease." According to the Anesthesia

25 ³ Respondent admitted during his investigatory interview that he did not specifically ask
26 patient A's consent "to do the third and fourth toes." Specifically, Respondent stated, in pertinent
27 part, "[Respondent]: So, preop I said that I'll go in and see what I need to do but it was just a
28 general type of discussion[;] [Medical Consultant]: You didn't ask her for consent to do the third
and fourth toes, even though the consent said second and third toes [?]" [Respondent]: Yeah.
[Medical Consultant]: Okay. You did not ask her at – in the pre-op holding area [?] [Respondent]:
Not directly, no." (Respondent's Interview, at pp. 50-51.)

Record, which described the operation as a “[Right] Foot Syndactylization of 2nd & 3rd Toes, 3rd Metatarsal Phalangeal Joint Capsulotomy,” patient A was anesthetized at 11:44 a.m. with first incision at 12:06 p.m. During the procedure, Respondent performed a right foot syndactylization of patient A’s third and fourth toes, not her second and third toes as originally planned and consented. The operation ended at 12:34 p.m. with patient A leaving the operating room at 12:27 p.m. and being transported to the post-anesthesia care unit (PACU). The Operative Report does not reference any alleged intraoperative decision to syndactylize the third and fourth toes instead of the second and third toes as originally planned and consented⁴ to by patient A.

19. On or about January 2, 2018, Respondent had his first post-operative visit with patient A. According to patient A, she became aware that Respondent had syndactylized (fused) the wrong toes when her bandages were removed by a medical assistant and she observed her third and fourth toes had been fused together. When confronted with this information, Respondent apologized and generally indicated he would not charge patient A for her related post-op visits with him.⁵ In his electronic medical record for this visit, Respondent documented that “Patient elected for syndalcyte of 4th and 3rd toes to reduce pain in her 4th digit...” which is disputed by patient A, not documented in Respondent’s Operative Report, and is inconsistent with the pre-operative consent forms and Respondent’s pre-operative medical records indicating that patient A “elected for syndalcyte of 2nd and 3rd toes to reduce pain in her 4th digit....”

20. On or about January 9, 2018, Respondent had his second post-operative visit with patient A. In his electronic medical record for this visit, Respondent documented again that “Patient elected for syndalcyte of 4th and 3rd toes to reduce pain in her 4th digit...” which is disputed by patient A, not documented in Respondent’s Operative Report, and is inconsistent with the pre-operative consent forms and Respondent’s pre-operative medical records indicating that patient A “elected for syndalcyte of 2nd and 3rd toes to reduce pain in her 4th digit....”

⁴ As Respondent admitted during his investigatory interview, “The entire consent form and everything regarding the consent has been problematic.” (Respondent’s Interview, at p. 46.)

⁵ Respondent’s post-op medical records for January 2, 9, and 23, 2018, indicate under the “Therapy” section, “Post-operative visit, without charge.”

1 21. On or about January 23, 2018, Respondent had his third post-operative visit with
2 patient A. In his electronic medical record for this visit, Respondent documented again that
3 "Patient elected for syndalcyte of 4th and 3rd toes to reduce pain in her 4th digit..." which is
4 disputed by patient A, not documented in Respondent's Operative Report, and is inconsistent with
5 the pre-operative consent forms and Respondent's pre-operative medical records indicating that
6 patient A "elected for syndalcyte of 2nd and 3rd toes to reduce pain in her 4th digit...."

7 22. On or about June 26, 2018, another provider, Dr. K.N., performed a "Right third and
8 fourth toe reversal of syndactyly and syndactyly of second and third toes" on patient A.

9 23. Respondent committed gross negligence in his care and treatment of patient A which
10 included, but was not limited to, the following:

11 (a) Respondent proceeded with a syndactylization of patient A's third and
12 fourth toes without adequate informed consent;

13 (b) Respondent recommended that patient A use ice on her foot which was
14 contraindicated with patient A's history and diagnosis of Raynaud's disease;

15 (c) Respondent failed to appropriately consider and assess patient A's
16 Raynaud's disease when he failed to include a vascular assessment and/or
17 consultation with indicated testing as part of any surgical consultation; and

18 (d) Respondent failed to order preoperative or postoperative x-rays for
19 patient A.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Repeated Negligent Acts)**

22 24. Respondent is further subject to disciplinary action under sections 2222, 2227, 2234
23 and 2497, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed
24 repeated negligent acts in his care and treatment of Patient A, as more particularly alleged herein:

25 (a) Paragraphs 11 through 23, above, are incorporated by reference and
26 realleged as if fully set forth herein;

27 (b) Respondent proceeded with a syndactylization of patient A's third and
28 fourth toes without adequate informed consent;

1 (c) Respondent recommended that patient A use ice on her foot which was
2 contraindicated with patient A's history and diagnosis of Raynaud's disease;

3 (d) Respondent failed to appropriately consider and assess patient A's
4 Raynaud's disease when he failed to include a vascular assessment and/or
5 consultation with indicated testing as part of any surgical consultation; and

6 (e) Respondent failed to order preoperative or postoperative x-rays for
7 patient A.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Dishonesty or Corruption)**

10 25. Respondent is further subject to disciplinary action under sections 2222, 2227, 2234
11 and 2497, as defined by section 2234, subdivision (e), of the Code, in that Respondent engaged in
12 dishonesty and/or corruption, as more particularly alleged herein:

13 (a) Paragraphs 11 through 23, above, are incorporated by reference and
14 realleged as if fully set forth herein;

15 (b) Respondent engaged in dishonesty when he documented in his post-op
16 medical records that "Patient elected for syndalcyte of 4th and 3rd toes to reduce
17 pain in her 4th digit..." when, in truth and fact, patient A did not elect to have the
18 syndactylization on her third and fourth toes.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(False Representations)**

21 26. Respondent is further subject to disciplinary action under sections 2222, 2227, 2234
22 and 2497, as defined by section 2261, of the Code, in that Respondent made false representations
23 in his post-op medical records, as more particularly alleged in paragraphs 11 through 23, and
24 paragraph 25, above, which are incorporated by reference and realleged as if fully set forth
25 herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Misconduct)**

3 27. Respondent is further subject to disciplinary action under sections 2222, 2227, 2234
4 and 2497, as defined by section 2234, of the Code, in that he has engaged in conduct which
5 breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a
6 member in good standing of the medical profession, and which demonstrates an unfitness to
7 practice medicine, as more particularly alleged in paragraphs 11 through 26, above, which are
8 incorporated by reference and realleged as if fully set forth herein.

9 **PRAYER**

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


12 1. Revoking or suspending Podiatric License Number E 5032, issued to Respondent
13 Wenjay Sung, D.P.M.;

14 2. Revoking, suspending or denying approval of Respondent Wenjay Sung, D.P.M.'s
15 authority to supervise physician assistants and advanced practice nurses;

16 3. Ordering Respondent Wenjay Sung, D.P.M., if placed on probation, to pay the Board
17 the costs of probation monitoring; and

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

19
20 DATED: August 21, 2019

21 
22 BRIAN NASLUND
23 Executive Officer
24 Podiatric Medical Board
25 Department of Consumer Affairs
26 State of California
27 Complainant
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