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

In the Matter of the Accusation Against: **MICHAEL M. FANOUS, D.P.M.** **2834 Hamner Ave. #113** **Norco, CA 92860** **Podiatric License No. E 3544,** Respondent.	Case No. 500-2019-000938 **ACCUSATION**

PARTIES

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

2. On or about August 15, 1988, the Podiatric Medical Board issued Podiatric License Number E 3544 to MICHAEL M. FANOUS, D.P.M. (Respondent). The Podiatric License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2024, unless renewed.

JURISDICTION

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

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4. Section 2222 of the Code states:

The California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed doctors of podiatric medicine.

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

5. Section 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 2228 of the Code states:

The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

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 2225.5 of the Code states in relevant part as follows:

(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

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(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, certified medical records means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

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9. 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 that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

(g) The 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.

10. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

COST RECOVERY

11. Section 2497.5 of the Code states:

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

12. On May 3, 2019, 48-year-old Patient A[1] presented to Respondent with a chief complaint of significant bilateral foot and ankle pain. She pointed to the front and outside of her ankles (bilateral sinus tarsi canal)[2] and heels as the most painful points of her feet. There was no report of history of trauma. She also reported to Respondent a past medical history of diabetes mellitus with neuropathy,[3] hypertension, and positive numbness, tingling sensation, and paresthesia[4] in both lower extremities. Upon examination, Respondent diagnosed Patient A with a number of conditions, including but not limited to, (1) painful plantar fasciitis,[5] bilaterally; (2) painful sinus tarsi syndrome/sinus tarsitis, bilaterally; and (3) painful bunion deformity, bilaterally.

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[1] To protect the privacy of the patient involved, the patient's name has not been included in this pleading. Respondent is aware of the identity of the patient referred herein.

[2] The tarsal sinus (or sinus tarsi) is a small tunnel containing nerves, ligaments, and blood vessels located on the lateral (outside) side of the hindfoot (at the front and outside of the ankle).

[3] Diabetic neuropathy is a type of nerve damage that can occur in someone with diabetes.

[4] Paresthesia refers to an abnormal sensation, typically tingling or pricking ("pins and needles").

[5] Plantar fasciitis is a condition that causes pain on the bottom of the heel.

Respondent discussed cortisone injection therapy with Patient A to treat the plantar fasciitis and sinus tarsi syndrome. Cortisone injection therapy was provided that day by injections to the plantar medial aspect of the bilateral calcaneus (heel bone) and to the sinus tarsi canal of the bilateral ankle. Among other things, she was instructed to return to the office in 1 week for x-ray evaluation and further recommendations.

13. Despite knowing that Patient A had diabetes mellitus with neuropathy, Respondent did not coordinate with Patient A's primary care physician who was managing her diabetes or otherwise determine the status of her diabetes control by obtaining, for example, pertinent medical records, before administering the cortisone injections. Respondent's administration of cortisone injections without coordinating Patient A's care with her previously established medical care providers or otherwise determining the status of her diabetes control by obtaining, for example, pertinent medical records, was a simple departure from the standard of care. Had Respondent coordinated with Patient A's primary care physician or obtained pertinent medical records, he would have learned that Patient A's diabetes was poorly controlled and that her last HgA1c level two weeks earlier on April 15, 2019 was 9.1% (normal range is 4.8-5.6%). This information is important to note because administering steroids to a known diabetic carries the risk of disrupting glucose control and can lead to acute decompensation.

14. Patient A returned to Respondent's office on May 11, 2019 for x-ray evaluation and further recommendations. The x-rays performed at an outside facility confirmed the bunion deformity of the first toe bilaterally and contracted pinky toe (hammertoe) bilaterally. Respondent discussed treatment options for the bunions and hammertoes with Patient A. They made plans for a bunionectomy with osteotomy[6] and internal fixation and arthroplasty[7] fifth toe, right foot, to be followed by the left foot at a later date.

15. On May 21, 2019, Patient A presented to Respondent's office for surgical consultation. Respondent conducted a history and physical and indicated the patient "is cleared for surgery, pending laboratory workup, EKG, and chest x-ray clearance as well." He also gave

[6] Bunionectomy with osteotomy is a surgery to realign the toe joint and involves removing or shaving the bone to realign or shorten the joint using surgical cuts.

[7] Arthroplasty is a surgical procedure to restore the function of a joint.

Patient A a prescription for Norco and Keflex and instructed her to stop taking certain medications before surgery.

16. On May 22, 2019, Respondent performed surgery on Patient A. During the bunionectomy, Respondent placed a screw in the bone for fixation. Patient A was discharged with instructions to take her postoperative medication, to keep her appointments with Respondent, and to ambulate in a surgical shoe, only.

17. Despite knowing that Patient A had diabetes mellitus with neuropathy, Respondent did not coordinate with Patient A's primary care physician who was managing her diabetes to request him to clear Patient A for surgery before performing surgery. Respondent's failure to coordinate Patient A's care with her previously established medical care providers was a simple departure from the standard of care. Had Respondent coordinated with Patient A's primary care physician or obtained her medical records, he would have learned that Patient A's diabetes was poorly controlled and that her last HgA1c level on April 15, 2019 was 9.1% (normal range is 4.8-5.6%). This information was important to note because it was an indication that Patient A was at even greater risk for surgical complications, including but not limited to, surgical site infection, osteomyelitis (bone infection), malunion or nonunion of fractures, impaired wound healing, and hardware/implant failure, all of which occurred here.

18. On May 28, 2019, Patient A presented to Respondent's office for her first post-operative visit. Patient A was noted to have ambulated to the office in a dry, clean dressing and surgical shoe as instructed and to be taking antibiotics as prescribed. Respondent's assessment was that Patient A was "improving nicely and uneventfully." Respondent, however, failed to perform post-operative x-rays at this visit as required by the standard of care. X-rays must be performed in the early post-operative period after the patient ambulates to confirm the sustenance of the fixation, the maintenance of the alignment, correction, and the fixation, and to rule out hardware or implant failure. Respondent's failure to perform post-operative x-rays was a simple departure from the standard of care.

19. On June 4, 2019, Patient A presented to Respondent's office for another post-operative visit. Patient A was noted to have ambulated in the office in a surgical shoe.

Respondent's assessment was again that Patient A was "improving nicely and uneventfully." He instructed her to return for another follow-up appointment in one (1) week. Respondent once again failed to perform post-operative x-rays at this visit as required by the standard of care. Respondent's failure to perform post-operative x-rays was a simple departure from the standard of care.

20. On June 11, 2019, Patient A presented to Respondent's office as instructed for a post-operative visit. Respondent's assessment again was that Patient A was "improving nicely and uneventfully." She was instructed to return for another follow-up appointment in two (2) weeks. Respondent once again failed to perform post-operative x-rays at this visit as required by the standard of care. Respondent's failure to perform post-operative x-rays was a simple departure from the standard of care.

21. On June 21, 2019, Patient A presented to Respondent's office as instructed for a post-operative visit. Respondent's assessment again was that Patient A was "improving nicely and uneventfully." She was instructed to return for another follow-up appointment in two (2) weeks for x-ray evaluation. Respondent once again failed to perform post-operative x-rays at this visit as required by the standard of care. Respondent's failure to perform post-operative x-rays was a simple departure from the standard of care.

22. On June 28, 2019, Patient A presented to Respondent's office stating that "she had bumped her incision twice." The note is unsigned. An unidentified member of Respondent's staff applied a 4x4 dressing and secured it with a bandage. Respondent was not present in the office this day and did not examine Patient A's wound nor were photographs of the foot taken. On this day, Respondent had his staff call in a prescription for Bactrim DS, an antibiotic, for Patient A. Respondent did not document the justification for the prescription.

23. On July 2, 2019, Patient A presented to Respondent's office for follow-up. On this day, Respondent noted that Patient A was "taking antibiotics due to slight cellulitis"[8] and that "[s]light erythema[9] is noted, significantly improved since previous visit." Photographs taken of

[8] Cellulitis is a deep infection of the skin caused by bacteria.
[9] Erythema is a superficial reddening of the skin as a result of injury or irritation.

Patient A's foot depict cellulitis and erythema and an ulceration (break on the skin) overlying the site of the surgical implant (screw). Respondent's assessment was that Patient A was: "1. Status post R foot surgery, improving nicely and uneventfully; 2. Cellulitis." Patient A was instructed to return for follow-up in 1 week. Respondent again failed to perform post-operative x-rays. At this visit, post-operative x-rays were required not only for the reasons set forth above, but also because at this visit, Patient A had an ulceration overlying a surgical implant. Respondent's failure to obtain post-operative x-rays subsequent to trauma and ulceration is an extreme departure from the standard of care. In addition, Respondent failed to obtain a culture and sensitivity at the site of the traumatic ulceration overlying the internal fixation in this poorly-controlled diabetic patient with cellulitis. Respondent's failure to perform a culture and sensitivity at the site of an ulceration overlying implanted surgical hardware is an extreme departure from the standard of care.

24. On July 9, 2019, Patient A presented to Respondent's office for follow-up. On this day, Respondent documented that Patient A had no edema, no erythema, and no signs of infection. Photographs taken of Patient A's foot at this visit, however, depict apparent cellulitis, erythema, and an ulceration (break on the skin) overlying the site of the surgical implant (screw). Respondent's assessment once again was that Patient A was "improving nicely and uneventfully." Patient A was instructed to return for follow-up on July 30, 2019 for continued follow-up. At this visit, Respondent again failed to perform post-operative x-rays subsequent to Patient A sustaining an ulceration overlying a surgical implant. Respondent's failure to obtain post-operative x-rays subsequent to trauma and ulceration is an extreme departure from the standard of care. In addition, Respondent failed to obtain a culture and sensitivity at the site of the traumatic ulceration overlying the internal fixation in this poorly-controlled diabetic patient with cellulitis. Respondent's failure to perform a culture and sensitivity at the site of an ulceration overlying implanted surgical hardware is an extreme departure from the standard of care.

25. On July 17, 2019, Patient A presented to her primary care physician for a routine follow-up visit. She complained to her primary care physician of pain, swelling, and bruising of the right toe. Her primary care physician ordered a foot x-ray to rule out osteomyelitis.

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26. On July 22, 2019, Patient A's primary care physician reviewed the report of the x-ray of the right foot. The report indicated there was bony erosion at the osteotomy site with soft tissue swelling suspicious for osteomyelitis. Patient A's primary care physician communicated these findings to Patient A and arranged to have her admitted to the hospital that day.

27. Patient A was hospitalized from July 22, 2019 to July 25, 2019. During the hospitalization, the healthcare providers noted she presented with a right first toe infection with ulceration, redness, and swelling. It was determined that she had a nonunion of the great toe and the screw was backing out through the skin with a sinus tract.[10] Although an MRI did not show osteomyelitis within the osteotomy, the fact that there was a nonunion and the screw was backing out through the skin, caused the providers to be concerned the bacterial infection would go down the screw and seed an infection to the bone. With her history of diabetes, this put Patient A at risk for the infection spreading and amputation of the toe. For those reasons, she was placed on a six-week course of IV antibiotics.

28. The six-week IV antibiotic therapy required Patient A to undergo placement of a PICC line[11] and monitoring of the line by home health nurses.

29. On August 15, 2019, Patient A presented to the hospital with diarrhea. The infectious disease physician was concerned that the antibiotic therapy contributed to a Clostridioides difficile (C. difficile)[12] infection and for that reason, discontinued the IV antibiotic therapy and started her on oral vancomycin (antibiotic). She was discharged on oral Cipro, Flagyl, and Questran (all antibiotics) for ten (10) days.

30. On October 25, 2019, after completing her antibiotic therapy, Patient A underwent removal of the protruding screw.

31. On December 9, 2019, January 21, 2020, February 24, 2020, and April 30, 2020, an investigator for the Board sent written requests for Patient A's certified records to Respondent

[10] A sinus tract is a narrow opening or passageway extending from a wound underneath the skin through soft tissue, usually from the cause of infection to the skin's surface.

[11] A PICC line (peripherally inserted central catheter) is a catheter that is thicker and more durable than a regular intravenous line and can stay in place longer.

[12] Clostridioides difficile is a germ (bacterium) that causes severe diarrhea and colitis (inflammation of the colon). In patients who are on antibiotic therapy, those antibiotics can kill the "good" bacteria in the intestinal tract and allow C. difficile bacteria to multiply.

through his counsel. The written requests were accompanied by Patient A's written authorization for release of records to the Board. Certified medical records were not provided.

32. On May 13, 2020, an investigator for the Board mailed a request for Patient A's certified records to Respondent directly. The request was accompanied by Patient A's written authorization for release of records to the Board.

33. On June 4, 2020, Respondent's Counsel emailed Patient A's uncertified medical records to the investigator.

34. On July 29, 2020, the investigator for the Board received a certification for Patient A's medical records.

35. On October 13, 2020, the investigator for the Board sent a request for imaging studies that were not included in Patient A's records from Respondent. The request was accompanied by Patient A's written authorization for release of records to the Board.

36. On October 23, 2020, Respondent's counsel emailed five (5) x-rays to the Board's investigator. No certification was provided.

37. On March 16, 2021, the investigator for the Board corresponded with Respondent's counsel requesting Respondent appear for an interview.

38. On April 15, 2021, Respondent's counsel advised that Respondent would voluntarily appear for an interview. The interview was scheduled for April 27, 2021.

39. On April 27, 2021, the District Medical Consultant and the investigator for the Board were prepared to interview Respondent. On that day, Respondent's counsel advised the investigator for the Board that Respondent would not appear for the interview that day, that a subpoena to appear would be required, and that Respondent's counsel would accept service of the subpoena.

40. On April 28, 2021, a subpoena was served on Respondent's counsel requiring Respondent to appear in person at the field office to be interviewed on May 11, 2021.

41. On May 11, 2021, without giving prior notice of intent to not appear at the address set forth on the subpoena, Respondent's counsel advised the investigator for the Board that

Respondent would not appear for the interview in person and that a phone appearance should be acceptable.

42. On May 11, 2021, Respondent was interviewed over the phone but refused to answer all of the questions. During the interview, Respondent identified records he claimed to be part of Patient A's medical record which had not previously been produced to the investigator for the Board.

43. On May 11, 2021, after the interview was completed, Respondent, through his counsel, provided previously unproduced surgical consents claimed to be part of Patient A's records to the Board's investigator. The records were not certified.

44. On May 11, 13, 24, and 25, 2021, the Board's investigator requested certification of the records.

45. On July 1, 2021, Respondent's counsel provided the Board's investigator with a certification reflecting the complete record count of forty-four (44) pages.

46. On September 14, 2021, the Board's investigator sent a written request to Respondent's counsel for Patient A's billing records as those were not included in the records produced. The request was accompanied by Patient A's written authorization for release of records to the Board.

47. On October 25, 2021, Respondent's counsel produced incomplete billing records without certification.

48. On December 2, 2021, Respondent's counsel produced the certification for the incomplete billing records.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or Incompetence)

49. On December 2, 2021, Respondent's counsel produced the certification for the incomplete billing records.

50. Respondent is subject to disciplinary action under Code section 2234, subdivisions (b) and/or (c) and/or (d) in that Respondent was grossly negligent and/or committed repeated

negligent acts and/or was incompetent in his care and treatment of Patient A. The circumstances are as follows:

51. Paragraphs 12 through 30 are incorporated by reference as though fully set forth herein.

52. Respondent's administration of cortisone injections on May 3, 2019 without coordinating Patient A's care with her previously established medical care providers or otherwise determining the status of her diabetes control by obtaining, for example, pertinent medical records, was a simple departure from the standard of care constituting incompetence.

53. Respondent's failure to coordinate Patient A's surgical clearance on or before May 22, 2019 with her previously established medical care providers was a simple departure from the standard of care constituting repeated negligent acts and incompetence.

54. Respondent's failure to perform post-operative x-rays at the visit of May 28, 2019 was a simple departure from the standard of care constituting repeated negligent acts and incompetence.

55. Respondent's failure to perform post-operative x-rays at the visit of June 4, 2019 was a simple departure from the standard of care constituting repeated negligent acts and incompetence.

56. Respondent's failure to perform post-operative x-rays at the visit of June 11, 2019 was a simple departure from the standard of care constituting repeated negligent acts and incompetence.

57. Respondent's failure to perform post-operative x-rays at the visit of June 21, 2019 was a simple departure from the standard of care constituting repeated negligent acts and incompetence.

58. Respondent's failure to perform post-operative x-rays at the visit of July 2, 2019 was an extreme departure from the standard of care constituting gross negligence, repeated negligent acts, and incompetence.

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59. Respondent's failure on July 2, 2019 to perform a culture and sensitivity test at the site of an ulceration overlying implanted surgical hardware is an extreme departure from the standard of care constituting gross negligence, repeated negligent acts, and incompetence.

60. Respondent's failure to perform post-operative x-rays at the visit of July 9, 2019 was an extreme departure from the standard of care constituting gross negligence, repeated negligent acts, and incompetence.

61. Respondent's failure on July 9, 2019 to perform a culture and sensitivity test at the site of an ulceration overlying implanted surgical hardware is an extreme departure from the standard of care constituting gross negligence, repeated negligent acts, and incompetence.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Adequate and Accurate Records)

62. Respondent is subject to disciplinary action under Code section 2266 in that Respondent failed to maintain adequate and accurate records relating to the provision of services to Patient A. The circumstances are as follows:

63. Paragraphs 12 through 30 are incorporated by reference as though fully set forth herein.

64. Additionally, on June 28, 2019, Patient A presented to Respondent's office stating that "she had bumped her incision twice." An unidentified member of Respondent's staff applied a 4x4 dressing and secured it with a bandage. Photographs of the foot and wound were not taken. The note is unsigned. The failure to identify the provider of care and accurately document the reason for the care constitutes a failure to maintain adequate and accurate records relating to the provision of services to Patient A.

65. Also on June 28, 2019, Respondent called in a prescription for Bactrim DS, an antibiotic, for Patient A. Respondent did not document the justification for the prescription. The failure to document in the medical record the justification for the prescription constitutes a failure to maintain adequate and accurate records relating to the provision of services to Patient A.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Attend and Participate in an Interview)

66. Respondent is subject to disciplinary action under Code section 2234, subdivision (g) in that Respondent failed to attend and participate in an interview by the board. The circumstances are as follows:

67. Paragraphs 37 through 42 are incorporated by reference as though fully set forth herein.

68. Respondent's failure to attend and participate in the interview scheduled for April 27, 2021 constitutes unprofessional conduct.

69. Respondent's failure to attend in person to participate in the interview scheduled for May 11, 2021 pursuant to subpoena, constitutes unprofessional conduct.

FOURTH CAUSE FOR DISCIPLINE

(Failure or Refusal to Comply with Request for Certified Records)

70. Respondent is subject to civil penalties, up to ten thousand dollars ($10,000), under Code section 2225.5 in that Respondent failed to and/or refused to comply with a request for certified medical records, that was accompanied by the patient's written authorization for release of records to the Board, within 15 days of receiving the request and authorization. The circumstances are as follows:

71. Paragraphs 31 through 48 are incorporated by reference as though fully set forth herein.

72. Respondent failed or refused to comply with the Board's written request for certified records, including medical, imaging, and billing records, starting on December 9, 2019 necessitating the Board make repeated requests for the records on January 21, 2020, February 24, 2020, April 30, 2020, and May 13, 2020.

73. When Respondent produced Patient A's records on June 4, 2020 – one-hundred-seventy-eight (178) days after the request was made, the records were uncertified. Respondent did not provide a certification until July 29, 2020 – fifty-five (55) days after production.

74. On October 13, 2020, the Board sent Respondent a request for Patient A's imaging studies as the "certified" records produced by Respondent were incomplete.

75. On October 23, 2020, Respondent, through his counsel, produced five (5) x-rays but no certification. The Board requested certification of the medical records but none was forthcoming for months.

76. On May 11, 2021, Respondent was interviewed. At his interview, the Board discovered Patient A's records produced to them by Respondent were still incomplete, Respondent's certification of completeness notwithstanding, as the records did not include Patient A's consents for treatment. The consents were emailed to the Board via Respondent's counsel but they were not certified.

77. On May 13, 2021, May 24, 2021, and May 25, 2021, the investigator for the Board made repeated requests for Respondent to certify the records and reminding Respondent that civil penalties could be imposed for failure to certify the records.

78. On July 1, 2021, five-hundred-seventy (570) days after the request for certified records was first made, Respondent provided a certification reflecting a "complete" record count of forty-four (44) pages.

79. On September 14, 2021, the Board requested Respondent to produce his billing records for Patient A because those were not included in the "complete" records. On October 25, 2021, Respondent produced incomplete, uncertified billing records for the care provided to Patient A on May 3, 10, 21, and 22, 2019, only. Billing records for the care and treatment allegedly provided to Patient A in June and July 2019 were not produced.

80. On December 2, 2021, Respondent certified the incomplete billing records as "complete."

DISCIPLINE CONSIDERATIONS

81. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges prior disciplinary actions against Responds as follows:

82. In a disciplinary action titled *In the Matter of the Accusation Against Michael M. Fanous, D.P.M.* before the Board of Podiatric Medicine, in Case Number D-5234, Respondent's license was revoked effective April 7, 1995[13] for unprofessional conduct pursuant to:

(1) Business and Professions Code sections 2222 and 2234(b) in that Respondent was guilty of gross negligence as a result of his "conduct in examining patient L without the presence of her parent or another adult, pulling her underpants down for his examination, taking measurements from her groin, and touching her vagina during his examination;"

(2) Business and Professions Code sections 2222 and 2234(d) in that Respondent demonstrated incompetence in the course of treating a patient based on Respondent's "conduct in pulling patient L's underpants down for his examination, taking measurements from her groin, and touching her vagina during his examination;"

(3) Business and Professions Code sections 2222, 2234, and 726 in that Respondent committed sexual abuse or misconduct with a patient which is substantially related to the qualifications, function, or duties of a licensed podiatrist based on Respondent's "conduct in pulling patient L's underpants down for his examination, taking measurements from her groin, and touching her vagina with his instrument and hands, and opening her vagina with his hands during his examination."

83. In a disciplinary action titled *In the Matter of the Letter of Public Reprimand Against Michael M. Fanous, D.P.M.* before the Board of Podiatric Medicine, in Case Number 1B-2012-228238, on July 24, 2015, Respondent was issued a Public Letter of Reprimand in connection with his treatment of a patient with peripheral artery disease in December 2011 because Respondent proceeded to perform surgery before obtaining a vascular consultation.

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[13] Respondent's license was reinstated in 2003.

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 Podiatric License Number E 3544, issued to MICHAEL M. FANOUS, D.P.M.;

2. Ordering Michael M. Fanous, D.P.M. to pay the Podiatric Medical Board civil penalties of up to ten thousand ($10,000) dollars for his failure or refusal to comply with the request for the certified medical records of Patient A;

3. Ordering Michael M. Fanous, D.P.M. to pay the Podiatric Medical Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5; and,

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

DATED: JUL 27 2022

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

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