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10 **BEFORE THE**
PODIATRIC MEDICAL BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 500-2021-001178

14 **CHRISTOPHER M. BYRNE, D.P.M.**
15 **1551 Bishop Street, Suite. 310C**
San Luis Obispo, CA 93401

ACCUSATION

16 **Doctor of Podiatric Medicine License**
17 **No. 4236,**

18 Respondent.
19

20 **PARTIES**

- 21 1. Brian Naslund (Complainant) brings this Accusation solely in his official capacity as
22 the Executive Officer of the Podiatric Medical Board (Board).
23 2. On November 3, 1999, the Board issued Podiatrist License Number DPM 4236 to
24 Christopher M. Byrne, D.P.M. (Respondent). That license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on May 31, 2023, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following
28

1 laws. All section references are to the Business and Professions Code (Code) unless otherwise
2 indicated.

3 4. Section 2229 of the Code states:

4 (a) Protection of the public shall be the highest priority for the Division of
5 Medical Quality, the California Board of Podiatric Medicine, and administrative law
6 judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

7 (b) In exercising his or her disciplinary authority an administrative law judge of
8 the Medical Quality Hearing Panel, the division, or the California Board of Podiatric
9 Medicine, shall, wherever possible, take action that is calculated to aid in the
10 rehabilitation of the licensee, or where, due to a lack of continuing education or other
11 reasons, restriction on scope of practice is indicated, to order restrictions as are
12 indicated by the evidence.

13 (c) It is the intent of the Legislature that the division, the California Board of
14 Podiatric Medicine, and the enforcement program shall seek out those licensees who
15 have demonstrated deficiencies in competency and then take those actions as are
16 indicated, with priority given to those measures, including further education,
17 restrictions from practice, or other means, that will remove those deficiencies. Where
18 rehabilitation and protection are inconsistent, protection shall be paramount.

19 5. Section 2222 of the Code states:

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

26 The California Board of Podiatric Medicine may order the denial of an
27 application or issue a certificate subject to conditions as set forth in Section 2221, or
28 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.

6. 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

1 during the board's consideration of the case and shall assist and advise the board.

2 7. Section 2227 of the Code states:

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

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

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

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

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

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

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

24 8. Section 2234 of the Code states in pertinent part:

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

28 ...

(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.

...

COST RECOVERY

9. Section 2497.5 of the Code states:

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

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

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

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

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

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

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

DEFINITIONS

10. A dermal ulceration plantar is defined as follows: "dermal" relates to the skin or dermis; "plantar" refers to the sole of the foot; an "ulceration" is an ulcer, i.e., a patch of tissue that is discontinuous with the surrounding tissue because the tissue within the ulcer has decayed or died and been swept away.

11. The first metatarsophalangeal joint is commonly known as the big toe joint. It is a "synovial" joint [a type of joint which is surrounded by a thick flexible membrane forming a sac

1 into which is secreted a viscous fluid that lubricates the joint] that connects the metatarsal bones
2 of the foot to the proximal phalanges of the toes. This type of joint permits motion and performs
3 a major role in walking.

4 12. Gout is sudden, severe pain in one or more joints caused by abnormally high levels of
5 a substance called uric acid in the blood.

6 13. Allopurinol is a medication used for the treatment and prevention of chronic gout
7 attacks and certain types of kidney stones. It is also used to treat elevated uric acid levels in the
8 blood and urine.

9 14. Colchicine is used to prevent gout attacks in adults and is also used to relieve the pain
10 of gout attacks when they occur. Colchicine is not a pain reliever and cannot be used to treat pain
11 that is not caused by gout. Colchicine is in a class of medications called anti-gout agents. It works
12 by stopping the natural processes that cause swelling and other symptoms of gout.

13 15. Steroid injections are injections of man-made drugs which are similar to cortisol, a
14 hormone the body produces in the adrenal glands. Steroid injections ease inflammation and slow
15 the body's immune system. Steroid injections are used to treat many kinds of inflammatory
16 conditions.

17 16. Peripheral artery disease (also called peripheral arterial disease) is defined as a
18 common condition in which narrowed arteries reduce blood flow to the arms or legs. In
19 peripheral artery disease, the legs or arms — usually the legs — do not receive enough blood
20 flow to keep up with demand. This may cause leg pain when walking and other symptoms.
21 Peripheral artery disease is usually a sign of a buildup of fatty deposits in the arteries or
22 atherosclerosis which causes narrowing of the arteries that can reduce blood flow in the legs and
23 sometimes the arms.

24 17. An intra-articular injection is an injection given in a joint to treat conditions like gout,
25 tendinitis, bursitis, rheumatoid arthritis, carpal tunnel syndrome, psoriatic arthritis, and sometimes
26 osteoarthritis. In the procedure, the affected joint is injected with a hypodermic needle through
27 which anti-inflammatory agents are delivered.

28 18. Sesamoid bones can be present as a normal variant in the body or form in response to

1 strain. The kneecap is the largest sesamoid bone in the body. Sesamoids act like pulleys,
2 providing a smooth surface for tendons to slide over, increasing the tendon's ability to transmit
3 muscular forces.

4 19. Osteomyelitis is an infection in a bone. Infections can reach a bone by traveling
5 through the bloodstream or spreading from nearby tissue or can also begin in the bone itself if an
6 injury exposes the bone to germs. People with chronic health conditions, such as diabetes or
7 kidney failure, are more at risk of developing osteomyelitis. People may develop osteomyelitis in
8 their feet if they have foot ulcers although osteomyelitis can be successfully treated. Most people
9 need surgery to remove areas of the bone that have died. After surgery the patient will often
10 require strong intravenous antibiotics.

11 **FACTUAL ALLEGATIONS**

12 20. The Board opened an investigation into the Respondent's care of Patient 1¹ which
13 disclosed Patient 1 went to see Respondent after Patient 1 developed a callus on the bottom of his
14 right-side big toe which was infected and oozing.

15 21. In January 2020, Patient 1 initially saw Respondent's physician assistant who cut
16 open the infected callus and found a hole inside. Patient 1 was treated for the ulceration from
17 January 2020 through early March 2020.

18 22. In March 2020, the Respondent diagnosed Patient 1 with gout and prescribed
19 Allopurinol. The Respondent continued to treat the patient with Allopurinol. For approximately
20 six months, Patient 1 occasionally saw Respondent to check on the progress of Patient 1's toe
21 whose condition failed to improve and became worse.

22 23. Respondent continued to treat Patient 1 for gout with Allopurinol after the patient's
23 bloodwork was negative for gout.

24 24. Respondent then treated Patient 1 with steroid injections which he delivered via a
25 plantar approach into Patient 1's first metatarsophalangeal joint of his right foot via injections on
26 March 4, 2020, April 23, 2020, and May 27, 2020.

27
28 ¹ The name of the patients and/or witnesses are anonymized to protect their privacy rights. The names will
be provided to the Respondent upon written request for discovery.

1 25. On May 27, 2020, the date of the third steroid injection, the Respondent observed a
2 notable instability on Patient 1's first metatarsophalangeal joint. An MRI of Patient 1's foot
3 confirmed Patient 1's first metatarsophalangeal joint of his right foot was now dislocated. The
4 Respondent did not provide the MRI results to Patient 1.

5 26. The Respondent provided Patient 1 with an orthopedic boot. The Respondent also
6 suggested placing pins and screws inside of the toe. Patient 1's toe continued to get worse and
7 failed to improve.

8 27. When the condition of Patient 1's toe continued to worsen, Patient 1 went to his
9 primary care physician, who observed that Patient 1 was still wearing the boot but not healing.
10 Patient 1's primary care physician suggested the see another podiatrist for a second opinion.

11 28. Patient 1 saw another podiatrist who reviewed the patient's files and the MRI and
12 stated Patient 1 needed exploratory surgery to observe the damage and to clean the wound.

13 29. The second podiatrist performed the surgery and tried to put Patient 1's toe in place
14 but was unable to do so. The second podiatrist informed Patient 1 that one of the tendons in his
15 toe was gone and explained that Patient 1's tendon was either severed or the infection had
16 destroyed it. The second podiatrist cleaned out Patient 1's infection and prescribed a high dose of
17 antibiotics for him.

18 30. After taking the antibiotics Patient 1 followed up with the second podiatrist
19 approximately three weeks later. At that time the second podiatrist informed Patient 1 that she
20 would need to amputate his big toe so the infection didn't spread to other toes or parts of his foot.
21 In addition to amputating Patient 1's big toe, she also removed part of the metatarsal of Patient 1's
22 foot above his big toe.

23 31. After the amputation, Patient 1 spent approximately six months in a wheelchair.
24 Patient 1 stated the wound healed well and he did not experience any further issues with his foot
25 problems after the recuperation period. However, Patient 1 has a difficult time with his balance
26 as well as with orientating himself. Patient 1 has had to make many adjustments to his daily life
27 as a result.

28 32. The standard of care does not permit giving multiple articular injections through

1 tendon and sesamoids into the first metatarsophalangeal joint of a patient with confirmed
2 peripheral artery disease and poor circulation.

3 33. The standard of care does not permit giving multiple steroid injections in an area of
4 prior ulceration.

5 34. The standard of care for the treatment of gout does not permit giving a patient
6 multiple steroid injections without confirming a diagnosis of gout through laboratory tests.

7 35. The standard of care for the treatment of gout is to give a single steroid injection
8 option, perform blood tests for gout, and provide the patient with a prescription for Colchicine.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Gross Negligence)**

11 36. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
12 the Code, in that he was grossly negligent when he engaged in the conduct described above in
13 paragraphs 20 through 31, including but not limited to, the following:

14 A. Respondent's treatments of multiple steroid injections delivered via a plantar
15 approach into the patient's first metatarsophalangeal joint of his right foot on March 4, 2020,
16 April 23, 2020, and May 27, 2020, to a patient with confirmed peripheral arterial disease and poor
17 circulation were each extreme departures from the standard of care.

18 B. Respondent's treatments of multiple steroid injections delivered to Patient 1's
19 foot into an area of the foot with confirmed prior ulceration via a plantar approach into Patient 1's
20 first metatarsophalangeal joint of his right foot on March 4, 2020, April 23, 2020, and May 27,
21 2020, were each extreme departures from the standard of care.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Repeated Negligent Acts)**

24 37. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
25 the Code, in that he was negligent in his care and treatment of Patient 1. The circumstances are as
26 follows:

27 38. Respondent injected steroids via a plantar approach into Patient 1's first
28 metatarsophalangeal joint of his right foot on multiple occasions to treat Patient 1 for acute gout.

39. The Respondent prescribed only Allopurinol to Patient 1 to treat what he believed to be Patient 1's acute gout.

40. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

41. Respondent's acts and/or omissions as outlined in paragraphs 20 through 26, above, whether proven individually, jointly or in any combination thereof, constitute repeated negligent acts, pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

42. Respondent is subject to disciplinary action under section 2234 of the code in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

43. The allegations of the First and Second Causes for Discipline are incorporated herein by reference as if fully set forth.

44. Respondent's acts and/or omissions as set forth in in paragraphs 20 through 26, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct.

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1 **PRAYER**

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


4 1. Revoking or suspending Doctor of Podiatric Medicine License No. 4236, issued to
5 Christopher M. Byrne, D.P.M.;

6 2. Ordering Christopher M. Byrne, D.P.M to pay the Podiatric Medical Board the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 2497.5;

9 3. Ordering Christopher M. Byrne, D.P.M if placed on probation, to pay the costs of
10 probation monitoring; and,

11 3. Taking such other and further action as deemed necessary and proper.

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13
14 DATED: DEC 16 2022



15 BRIAN NASLUND
16 Executive Officer
17 Podiatric Medical Board
18 Department of Consumer Affairs
19 State of California
20 *Complainant*

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