

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

**In the Matter of the Accusation
Against:**

Richard Ton Tu, D.P.M.

**Doctor of Podiatric Medicine
Certificate No. E-4680**

Respondent.

Case No: 500-2021-001193

DECISION AND ORDER

**The attached Stipulated Settlement and Disciplinary Order is hereby
accepted and adopted by the Podiatric Medical Board of the Department of
Consumer Affairs, State of California, as its Decision in the above-entitled matter.**

This Decision shall become effective at 5:00 p.m. on OCT 12 2023.

DATED SEP 12 2023

PODIATRIC MEDICAL BOARD


Carolyn McAloon, D.P.M, President

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
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8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 500-2021-001193

14 **RICHARD TON TU, D.P.M.**
4475 University Ave.
15 San Diego, CA 92105

OAH No. 2022120233

16 License No. 4680,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Brian Naslund (Complainant) is the Executive Officer of the Podiatric Medical Board
23 (Board). He brought this action solely in his official capacity and is represented in this matter by
24 Rob Bonta, Attorney General of the State of California, by LeAnna E. Shields, Deputy Attorney
25 General.

26 2. Respondent Richard Ton Tu, D.P.M. (Respondent) is represented in this proceeding
27 by attorney Raymond McMahon, Esq., with Doyle Schafer McMahon, LLP, whose address is:
28 5440 Trabuco Road, Irvine, CA 92620.

3. On or about July 13, 2006, the Board issued a Doctor of Podiatric Medicine License No. 4680 to Respondent. The Doctor of Podiatric Medicine License No. 4680 was in full force and effect at all times relevant to the charges brought in Accusation No. 500-2021-001193, and will expire on September 30, 2024, unless renewed.

JURISDICTION

4. On November 15, 2022, Accusation No. 500-2021-001193 was filed before the Board, and is currently pending against Respondent. On November 15, 2022, a true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A true and correct copy of Accusation No. 500-2021-001193 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 500-2021-001193. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to each and every charge and allegation contained in

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1 Accusation No. 500-2021-001193, and agrees that he has thereby subjected his Doctor of
2 Podiatric Medicine License No. 4680 to discipline.

3 10. Respondent further agrees that if an accusation is ever filed against him before the
4 Board, all of the charges and allegations contained in Accusation No. 500-2021-001193, shall be
5 deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or
6 any other licensing proceeding involving Respondent in the State of California.

7 11. Respondent agrees that his Doctor of Podiatric Medicine License No. 4680 is subject
8 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
9 Disciplinary Order below.

10 CONTINGENCY

11 12. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
12 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
13 submitted to the Board for its consideration in the above-entitled matter and, further, that the
14 Board shall have a reasonable period of time in which to consider and act on this Stipulated
15 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
16 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
17 prior to the time the Board considers and acts upon it.

18 13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
19 null and void and not binding upon the parties unless approved and adopted by the Board, except
20 for this paragraph, which shall remain in full force and effect. Respondent fully understands and
21 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
22 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
23 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
24 the Board, any member thereof, and/or any other person from future participation in this or any
25 other matter affecting or involving respondent. In the event that the Board does not, in its
26 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
27 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
28 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party

hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

15. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the Doctor of Podiatric Medicine License No. 4680 issued to Respondent RICHARD TON TU, D.P.M., shall be, and is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in connection with Accusation No. 500-2021-001193, is as follows:

Respondent committed departures in his care and treatment of one patient, when he prescribed antibiotics before evaluating the patient for possible infection, did not clearly document his care or communications with the patient, and did not properly terminate the physician-patient relationship, as more fully described in Accusation No. 500-2021-001193, attached herein. Respondent's actions constituted unprofessional conduct.

1. **EDUCATION COURSE.** Within 60 days of the effective date of this Decision, 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 ten (10) hours. The educational program(s) or course(s) shall be on topics relating to infections and antibiotics 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 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 to the Board or its designee within fifteen (15) days of completion.

Failure to comply with this provision shall constitute general unprofessional conduct and may serve as grounds for further disciplinary action.

2. MEDICAL RECORD KEEPING COURSE. Within sixty (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 within six (6) months is a violation of this order.

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 been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee no later than fifteen (15) calendar days after successfully completing the course, or no later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

Failure to comply with this provision shall constitute general unprofessional conduct and may serve as grounds for further disciplinary action.

3. ETHICS COURSE. Within sixty (60) days of the effective date of this Decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course within one (1) year of enrollment is a violation of this order.

An ethics 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 been approved by the Board or its designee had the course been taken after the effective date of this Decision.

1 Respondent shall submit a certification of successful completion to the Board or its
2 designee no later than fifteen (15) calendar days after the effective date of the Decision.

3 Failure to comply with this provision shall constitute general unprofessional conduct and
4 may serve as grounds for further disciplinary action.

5 4. COST RECOVERY. Within six (6) months from the effective date of the Decision
6 or other period agreed to by the Board or its designee, Respondent shall reimburse the Board the
7 amount of \$7,500.00 for its investigative and prosecution costs. The filing of bankruptcy or
8 period of non-practice by Respondent shall not relieve Respondent of his obligation to reimburse
9 the Board for its costs.

10 Failure to comply with this provision shall constitute general unprofessional conduct and
11 may serve as grounds for further disciplinary action.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, Raymond McMahon, Esq. I fully understand the stipulation and
15 the effect it will have on my Doctor of Podiatric Medicine License No. 4680. I enter into this
16 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
17 to be bound by the Decision and Order of the Podiatric Medical Board.

18
19 DATED:

6/6/23


20 RICHARD TON TU, D.P.M.
Respondent

21 I have read and fully discussed with Respondent Richard Ton Tu, D.P.M., the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24
25 DATED: June 6, 2023


26 RAYMOND MCMAHON, ESQ.
Attorney for Respondent
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ENDORSEMENT

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

DATED: June 6, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 500-2021-001193

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Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 500-2021-001193

14 **RICHARD TON TU, D.P.M.**
4475 University Ave.
15 San Diego, CA 92105

A C C U S A T I O N

16 **Doctor of Podiatric Medicine**
License No. 4680,

17 Respondent.
18

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about June 13, 2006, the Board issued Doctor of Podiatric Medicine No. 4680
26 to Richard Ton Tu, D.P.M. (Respondent). The Doctor of Podiatric Medicine was in full force and
27 effect at all times relevant to the charges brought herein and will expire on September 30, 2024,
28 unless renewed.

1 **JURISDICTION**

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

5 4. Section 2222 of the Code states:

6 The California Board of Podiatric Medicine shall enforce and administer this
7 article as to doctors of podiatric medicine. Any acts of unprofessional conduct or
8 other violations proscribed by this chapter are applicable to licensed doctors of
9 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.

10 The California Board of Podiatric Medicine may order the denial of an
11 application or issue a certificate subject to conditions as set forth in Section 2221, or
12 order the revocation, suspension, or other restriction of, or the modification of that
13 penalty, and the reinstatement of any certificate of a doctor of podiatric medicine
14 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.

15 5. Section 2497 of the Code states:

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

19 (b) The board may hear all matters, including but not limited to, any contested
20 case or may assign any such matters to an administrative law judge. The proceedings
21 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.

22 6. Section 2234 of the Code, states, in pertinent part:

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

25 ...

26 (b) Gross negligence.

27 (c) Repeated negligent acts. To be repeated, there must be two or more
28 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 (1) An initial negligent diagnosis followed by an act or omission medically
2 appropriate for that negligent diagnosis of the patient shall constitute a single
negligent act.

3 (2) When the standard of care requires a change in the diagnosis, act, or
4 omission that constitutes the negligent act described in paragraph (1), including, but
5 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.

6 ...

7 7. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
8 adequate and accurate records relating to the provision of services to their patients constitutes
9 unprofessional conduct.

10 COST RECOVERY

11 8. Section 2497.5 of the Code states:

12 (a) The board may request the administrative law judge, under his or her
13 proposed decision in resolution of a disciplinary proceeding before the board, to
14 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.

15 (b) The costs to be assessed shall be fixed by the administrative law judge and
16 shall not be increased by the board unless the board does not adopt a proposed
17 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.

18 ...

19 FACTUAL ALLEGATIONS

20 9. On or about February 23, 2021, Patient A,¹ presented for treatment with Respondent.
21 According to records, Patient A presented with complaints of bilateral heel pain and foot pain.
22 Respondent performed an examination of Patient A and assessed Patient A with, among other
23 things, plantar fasciitis,² right worse than left, and bilateral hallux³ ingrown toe nail. According

24
25 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 to herein.

26 ² Plantar fasciitis is a condition in which there is inflammation of the ligament that
27 connects the heel bone to the toes, resulting in pain in the heel.

28 ³ Hallux is the innermost digit of the foot, commonly known as the big toe.

1 to records, Respondent also documented Patient A's pedal pulses as 2/4 bilaterally. According to
2 records, Respondent recommended matrixectomy.⁴ According to records, Respondent
3 administered a trigger point injection to Patient A's right foot during this visit relieving Patient
4 A's pain.

5 10. On or about March 9, 2021, Patient A presented for treatment with Respondent.
6 According to records, Patient A presented with complaints of pain due to an ingrown toe nail of
7 the left hallux. According to records, Respondent performed an examination of Patient A and
8 assessed Patient A with chronic localized infection due to onychocryptosis⁵ of the left hallux nail.
9 According to records, Respondent also documented Patient A's pedal pulses as 1/4 bilaterally.
10 According to records, Respondent performed a matrixectomy of the bilateral borders of the left
11 hallux nail.

12 11. On or about March 23, 2021, Patient A presented for treatment with Respondent.
13 According to records, Patient A presented for a follow-up on the matrixectomy of his left hallux
14 toe nail. According to records, Respondent performed an examination of Patient A and noted
15 Patient A's status had improved. According to records, Respondent again documented Patient
16 A's pedal pulses as 2/4 bilaterally. According to records, Respondent issued a prescription to
17 Patient A for antibiotics.

18 12. On or about April 6, 2021, Patient A presented for treatment with Respondent.
19 According to records, Patient A presented with complaints of pain due to an ingrown toe nail of
20 the right hallux. Respondent's records for this visit contain much of the same language as his
21 previous encounter notes for Patient A, including, but not limited to, Patient A's history of
22 present illness. According to records, Respondent performed an examination of Patient A and
23 assessed Patient A with chronic localized infection due to onychocryptosis of the right hallux nail
24 and performed a matrixectomy of the bilateral borders of the right hallux nail.

25 _____
26 ⁴ Matrixectomy is a procedure involving the removal of the growth area of the nail that
27 leads to the curved ingrown toenail.

28 ⁵ Onychocryptosis is a condition in which the corners or edges of the toenail grow into the
skin of the toe.

1 13. On or about April 19, 2021, Patient A contacted Respondent's office by telephone
2 reporting infection of the toe and requesting antibiotics. According to records, Respondent issued
3 an electronic prescription for antibiotics for Patient A.

4 14. On or about April 20, 2021, Respondent contacted Patient A by telephone to inform
5 him that he was referring Patient A back to the Department of Veteran Affairs due to lack of
6 payment for past services provided to Patient A. According to records, during this phone call,
7 Respondent informed Patient A he was cancelling his follow-up appointment for heel pain.

8 15. On or about April 29, 2022, Respondent was interviewed by investigators with the
9 Health Quality Investigation Unit of the Department of Consumer Affairs regarding his care and
10 treatment of Patient A. During this interview, Respondent stated that Patient A came into his
11 office after the April 20, 2021, encounter over the phone. This encounter was not documented in
12 Patient A's records.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 16. Respondent has subjected his Doctor of Podiatric Medicine License No. 4680 to
16 disciplinary action under sections 2497, 2222, and 2234, subdivision (b), of the Code, in that he
17 was grossly negligent in his care and treatment of Patient A, as more particularly alleged
18 hereinafter:

19 A. Paragraphs 9 through 15, above, are hereby incorporated by reference and
20 realleged as if fully set forth herein;

21 B. Respondent failed to appropriately and accurately document communications with
22 Patient A and Patient A's condition, care, and treatment;

23 C. Respondent failed to appropriately evaluate Patient A's reported infection on April
24 19, 2021, and issued a prescription for antibiotics without any further evaluation of
25 Patient A's toe, or any follow through to ensure the infection had resolved; and

26 D. Respondent failed to properly terminate his relationship with Patient A in that he
27 failed to provide continued care until Patient A's care could be transferred to
28 another physician and he failed to ensure Patient A's infection had resolved.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 17. Respondent has further subjected his Doctor of Podiatric Medicine License No. 4680
4 to disciplinary action under sections 2497, 2222, and 2234, subdivision (c), of the Code, in that he
5 was committed repeated negligent acts in his care and treatment of Patient A, as more particularly
6 alleged in paragraphs 9 through 16, above, which are hereby incorporated by reference and
7 realleged as if fully set forth herein.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Adequate and/or Accurate Records)**

10 18. Respondent has further subjected his Doctor of Podiatric Medicine License No. 4680
11 to disciplinary action under sections 2497, 2222, and 2266, of the Code, in that he failed to
12 maintain adequate and/or accurate records regarding his care and treatment of Patient A, as more
13 particularly alleged in paragraphs 9 through 17 above, which are hereby incorporated by
14 reference and realleged as if fully set forth herein.

15 **PRAYER**

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

- 18 1. Revoking or suspending Doctor of Podiatric Medicine No. 4680, issued to
19 Respondent Richard Ton Tu, D.P.M.;
- 20 2. Ordering Respondent Richard Ton Tu, D.P.M., to pay the Board the reasonable costs
21 of the investigation and enforcement of this case, pursuant to Code section 2497.5; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: NOV 15 2022

25 
26 BRIAN NASLUND
27 Executive Officer
28 Podiatric Medical Board
Department of Consumer Affairs
State of California
Complainant

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