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8
9 **BEFORE THE**
PODIATRIC MEDICAL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 500-2021-001222

14 MICHAEL BASTANI, D.P.M.

15 18124 Culver Dr., Suite F

ACCUSATION

16 Irvine, CA 92612-2729

17 Doctor of Podiatric Medicine License 5477,

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, Department of Consumer Affairs.

23 2. On or about July 12, 2018, the Podiatric Medical Board issued Podiatrist License
24 Number 5477 to Michael Bastani, D.P.M. (Respondent). The Podiatrist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on February 29,
26 2024, unless renewed.

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28 //

JURISDICTION

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

4. Section 2229 of the Code states:

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

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

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

5. 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 [The Medical Practice Act] 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.

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

1 to practice podiatric medicine for any of the causes set forth in Article 12
2 (commencing with Section 2220) in accordance with Section 2222.

3 (b) The board may hear all matters, including but not limited to, any contested
4 case or may assign any such matters to an administrative law judge. The proceedings
5 shall be held in accordance with Section 2230. If a contested case is heard by the
6 board itself, the administrative law judge who presided at the hearing shall be present
7 during the board's consideration of the case and shall assist and advise the board.

8
9 7. Section 2227 of the Code states:

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

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

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

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

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

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

25 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
26 medical review or advisory conferences, professional competency examinations,
27 continuing education activities, and cost reimbursement associated therewith that are
28 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.

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

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:

(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.

1 (2) When the standard of care requires a change in the diagnosis, act, or
2 omission that constitutes the negligent act described in paragraph (1), including, but
3 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
4 licensee's conduct departs from the applicable standard of care, each departure
5 constitutes a separate and distinct breach of the standard of care. . .

6 **COST RECOVERY**

7 9. 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 sum
11 not to exceed the actual and reasonable costs of the investigation and prosecution of
12 the case.

13 (b) The costs to be assessed shall be fixed by the administrative law judge and
14 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 not
19 made by the licensee, the board may enforce the order for payment by bringing an
20 action in any appropriate court. This right of enforcement shall be in addition to any
21 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 decision
23 shall be conclusive proof of the validity of the order of payment and the terms for
24 payment.(e)(1) Except as provided in paragraph (2), the board shall not renew or
25 reinstate the license of any licensee who has failed to pay all of the costs ordered
26 under this section.(2) Notwithstanding paragraph (1), the board may, in its discretion,
27 conditionally renew or reinstate for a maximum of one year the license of any
28 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.

22 **DEFINITIONS**

23 10. A bunion [also known as hallux valgus] is defined as an inflamed swelling of the
24 small fluid-filled sac on the first joint of the big toe accompanied by enlargement and protrusion
25 of the joint and is comprised of bone and soft tissue.

26 11. A bunionectomy is defined as surgery to excise all or part of a bunion. The surgery
27 involves removing soft tissue and bone and may also involve realigning the toe joint.
28

1 12. An Austin bunionectomy is a procedure done on the bones where the bunion is
2 corrected by relocating or sliding across the top of the first metatarsal bone. The Austin
3 bunionectomy is generally used to remove the prominent lump of bone (bunion) and to release a
4 tight tendon that tends to the great toe towards the second toe. The osteotomy or bone cut is near
5 the joint, so it is useful when the distal end of the metatarsal needs to be realigned. The Austin
6 bunionectomy is not for everyone with a bunion or hallux valgus, as there are so many different
7 bones and issues involved in each bunion. The choice of procedure will depend on how much of
8 each of the different bones and soft tissue are involved and the individual surgeon's preferences.

9 13. The first metatarsal bone is the bone in the foot just behind the big toe. The first
10 metatarsal bone is the shortest of the metatarsal bones and by far the thickest and strongest of
11 them. Like the four other metatarsals, it can be divided into three parts: base, body, and head.

12 14. A Tailor's bunionectomy is for a "tailor's bunion," also called a bunionette, a bony
13 lump that forms along the side of the little toe. It happens when the fifth metatarsal bone, the
14 very bottom bone on the little toe, enlarges or shifts outward. A tailor's bunion is similar to a
15 regular bunion, but it is in a different location. Typical bunions grow on the inside of the foot
16 below the big toe. Tailor's bunions develop on the outside of the foot at the base of the little toe.
17 Tailor's bunion surgeries will typically involve cutting the metatarsal bone to reduce the size of
18 the bone by removing a small piece and then moving part of the bone into better alignment so that
19 it does not press on the skin. It is a very stable cut in the bone similar to the "Austin
20 bunionectomy" and once the bone is re-positioned, it is held in place by one or two small screws
21 often left in place after the surgery. Once the bone heals, the screws may be removed or left in
22 place.

23 15. A fifth toe or fifth toe arthroplasty is a surgical procedure that removes a damaged toe
24 joint to try to realign the toe. The surgery can help reduce pain and restore function to a toe that
25 has been damaged by injury, arthritis, or other conditions.

26 16. "Perioperative" describes the duration of a patient's surgical procedure and
27 commonly includes ward admission, anesthesia, surgery, and recovery. This term generally
28 refers to the three phases of surgery: preoperative, intraoperative, and postoperative.

17. "Intraoperative" is the time occurring or performed during a surgical operation.

FACTUAL ALLEGATIONS

18. The Board opened an investigation into Respondent's care of Patient 1 after receiving a complaint on or about December 11, 2021. The complaint stated Respondent performed unnecessary hammertoe surgery without providing informed consent for the surgery allegedly performed on or about December 15, 2019. It should be noted the "December 15, 2019" surgery date referenced in the complaint was not the accurate date of the surgery. Subsequent investigation confirmed the surgery was performed on or about August 16, 2019.

19. On or about July 6, 2022, the Department of Consumer Affairs Division of Investigation Health Quality Investigations Unit Investigator [HQIU] assigned to investigate this matter for the Board telephonically interviewed Patient 1 regarding her complaint.

20. Patient 1 told the Investigator that in 2019 she sought treatment for bunion pain in her right foot and was referred to the Respondent's office. During the consultation, Respondent recommended bunion and hammer toe surgery due to Patient 1's wide feet. Patient 1 stated that at the consultation, she thought the procedure would be a cosmetic procedure. Patient 1 further stated that there was a lack of informed consent because she was unaware that the surgery required the removal of a joint on her right foot, resulting in an unconsented surgery.

21. Patient 1 told the Investigator that after her surgery, Patient 1 had a follow-up visit with Respondent to remove the hardware that remained in Patient 1's right foot. Respondent stated that it would be a quick procedure to remove the hardware. For an hour, Respondent struggled unsuccessfully to remove the hardware. Respondent then told Patient 1 she would need to go to the hospital to have the hardware removed. Patient 1 went to a hospital and had the hardware removed.

22. Patient 1 told the Investigator that after her surgery, Patient 1 had experienced chronic pain and discomfort. Patient 1 told the Investigator she believes Respondent performed an unnecessary procedure and was negligent in the care he provided.

23. On or about July 18, 2022, the Investigator received Patient 1's signed consent to release her medical records. Thereafter the Investigator obtained Patient 1's certified records

1 from Respondent.

2 24. On or about November 15, 2022, Respondent and his attorney participated in a
3 digitally recorded Subject interview with the Investigator and Board's Medical Consultant.

4 25. On or about January 5, 2023, the Department of Consumer Affairs Division of
5 Investigation Health Quality Investigations Unit Analyst contacted Expert Dr. 1, an approved
6 expert for the Board and confirmed the expert's qualifications to perform the expert review. On
7 or about January 6, 2023, the Analyst uploaded the electronic case binder with all of the case
8 materials to Expert Dr. 1 for his expert review. Those materials included Patient 1's certified
9 medical records and the transcript of Respondent's Subject Interview.

10 26. On or about January 25, 2023, Expert Dr. 1 provided the Board with his expert report
11 based on his review of the materials the Board provided for his review that was prepared on or
12 about January 21, 2023.

13 27. Expert Dr. 1's report delineated extreme departures for improper documentation with
14 regard to which provider evaluated Patient 1, improper chart editing in a timely fashion, failure to
15 provide appropriate information to obtain informed consent, and inadequate preoperative
16 planning.

17 28. Expert Dr. 1's report determined that Patient 1's surgery was performed on August
18 16, 2019, and discussed his review of each Respondent's certified medical records for Patient 1.

19 29. Expert Dr. 1 stated Patient 1's December 11, 2021, complaint was an online
20 complaint summary that stated Respondent performed unnecessary hammertoe surgery. The
21 patient's complaint stated that Patient 1's patient files show no record of fifth metatarsal pain. As
22 a result of Respondent's treatment Patient 1 suffered from the loss of joint movement and pain.
23 Patient 1's next concern was that a ligament in her big toe was shortened and repositioned during
24 Respondent's performance of the surgery. Additionally, Respondent placed hardware in Patient
25 1's joint that restricted movement that caused misalignment of the toe and loss of range of
26 motion.

27 30. Patient 1's complaint stated the hammertoe bone on the side of her foot was shaved
28 off, and excess skin was removed from her toe. As a result, Patient 1 required synthetic insertion

1 to reconnect the bones, and the toe could not be properly repositioned. Patient 1's complaint
2 raised a question of lack of informed consent and stated that she was not given information
3 Respondent would remove a joint from her toe and that resulted in an un-consented surgery.

4 31. Expert Dr. 1 examined a chart note dated June 26, 2019, in Patient 1's certified
5 medical records. The June 26, 2019, note stated in part that Patient 1's chief complaint is painful
6 bumps on the right foot, both sides, while she was in shoes, and that she "... has tried wider
7 shoes. Denies [sic] foot trauma."

8 32. The June 26, 2019, chart notes states Patient 1's physical exam indicates normal
9 neurovascular status to her foot. Patient 1 had right foot pain at the medial eminence with
10 erythema and pain noted. There is limited dorsiflexion, tenderness at the fifth metatarsal
11 phalangeal joint, and hammertoe deformities four and five. Patient 1's X-ray results were
12 reviewed, and Patient 1 opted for correction of the right foot bunion, bunionette, and arthroplasty
13 fifth digit.

14 33. The June 26, 2019, note was electronically signed over two years later, on March 7,
15 2022, at 04:11 PM PST [sic] by a different provider, Dr. 2. Both Respondent and Dr. 2's chart
16 notes for Patient 1 are on pre-printed stationery from the same practice address.

17 34. Expert Dr. 1 examined a chart note dated August 2, 2019, when the patient saw
18 Respondent for a preoperative visit. Per the Respondent's note, the surgery was reviewed with
19 the patient, who signed the consent form.

20 35. The August 2, 2019, note was electronically signed by Respondent over two years
21 later, on March 7, 2022, at 04:11 PM PST [sic].

22 36. Expert Dr. 1 examined the August 16, 2019, operative report, which lists the
23 Respondent as the surgeon. The procedure performed is listed as a right foot Austin
24 bunionectomy, and fixation with two screws utilized. A temporary K wire was removed, and it is
25 mentioned that mineralized bone matrix was applied to the bone cyst.

26 37. The August 16, 2019, operative report states that the Tailor's bunionectomy was then
27 performed via a reverse Austin bunionectomy performed on the fifth metatarsal head with a
28 fixated screw. A fifth toe arthroplasty at the proximal and phalangeal joint was also formed,

1 moving the head of the proximal phalanx. The fifth toe arthroplasty is not listed.

2 38. Per Expert Dr. 1's report, there is no mention of any complications to the surgery in
3 the "... fairly standard dictated procedure notes". Respondent electronically signed those notes
4 on August 19, 2020, at 13:10.

5 39. Per Expert Dr. 1's report, there is an X-ray report dated August 16, 2019, indicating
6 surgical fixation of the first and fifth metatarsals dictated on August 16, 2019, at 15:27 by Dr. 3,
7 and electronically authenticated on August 16, 2019, by Dr. 3 at 16:01.

8 40. Expert Dr. 1 examined a chart note dated August 19, 2019, for Patient 1's first
9 postoperative visit. The note indicates Patient 1 had an Austin bunionectomy, Tailor's
10 bunionectomy, and fifth digit arthroplasty on the right foot. Patient 1 states she has no significant
11 pain and is taking only ibuprofen. Patient 1 states she is not putting any weight on her foot and
12 keeping her leg elevated. Clinically there are no signs of any infection, and the incision is healing
13 well.

14 41. The chart note mentions cystic changes and damaged articular cartilage noted during
15 the surgery. The chart note states that the patient verbally acknowledged that Respondent had
16 mentioned the possibility of cystic bone issues before surgery.

17 42. The August 19, 2019, note was electronically signed by Respondent over two years
18 later, on March 7, 2022, at 04:11 PM PST [sic].

19 43. Expert Dr. 1 examined texts on August 21, 2019, between Respondent and Patient 1
20 when Patient 1 texted Respondent and stated her pain level had gone up in the last four weeks.
21 Patient 1 texted that she is going on an international trip in three weeks and wonders if a new
22 procedure could be done before the trip.

23 44. The Respondent's August 21, 2019, text reply stated that a procedure could make it
24 more tender and more likely to get infected. Respondent's text reply stated that Patient 1 had to
25 wait six to eight weeks before any decision could be made about removing the screws.

26 45. During these August 21, 2019, texts, Respondent stated he would like to use texting
27 only for emergencies and would instead prefer that the patient come to the office to discuss these
28 issues. The Respondent recommended that Patient 1 stop driving and refrain from strenuous

1 activities. Patient 1 replied that she tries to limit her texting, but she does not know what might
2 actually constitute an emergency.

3 46. Expert Dr. 1 examined a chart note dated August 28, 2019, for Patient 1's
4 postoperative visit 12 days after surgery. Patient 1 stated she is walking around the house with
5 the surgical shoe in minimal pain. The intraoperative findings were again reviewed due to the
6 condition of the bone and the need to place a screw in the different orientation. The Respondent
7 removed the Patient 1's stitches at her fifth toe and determined there appeared to be appropriate
8 healing with no evidence of any incision breakdown.

9 47. The August 28, 2019, note also states Patient 1 removed the dressing and had been
10 applying Manuka honey to the incision. Respondent told Patient 1 not to use the honey product
11 and the intraoperative findings were again reviewed with Patient 1.

12 48. The August 28, 2019, note was electronically signed by Respondent over two years
13 later, on March 7, 2022, at 04:11 PM PST [sic].

14 49. Expert Dr. 1 examined a chart note dated September 13, 2019, which stated Patient 1
15 seemed to be doing well, returned to work two weeks post-surgery, had been driving, and had to
16 slam on her brakes once. The note states that Patient 1 is required to travel to different school
17 campuses and walk to different buildings. Patient 1 was planning to go to San Francisco for the
18 weekend and was going to Europe three weeks later.

19 50. The Respondent's September 13, 2019, chart note stated the osteotomy site was not
20 visible, although one of the screws appeared long, a source of pain that might need to be
21 removed. Respondent did not find evidence of any infection and remarked that the incision was
22 healing well. The Respondent advised Patient 1 not to go into a pool without any protection to
23 the foot. The Respondent also advised Patient 1 that plane travel would cause more swelling and
24 should be avoided if possible.

25 51. The September 13, 2019, note was electronically signed by Respondent over two
26 years later, on March 7, 2022, at 04:11 PM PST [sic].

27 52. Expert Dr. 1 examined Respondent's September 20, 2019, texts from the beginning,
28 with a text from Respondent's office stating Patient 1 called the office saying she was in pain and

1 had tried to reach Respondent. Respondent's response via text message to his staff stated he had
2 not received any messages from Patient 1 and instructed his staff to tell Patient 1 to come into the
3 office on Monday. Respondent texted his staff to tell the patient to contact him directly if this
4 was an emergency and asked that the staff inform him regarding the Patient 1's response.

5 53. Respondent's staff texted him that in her texts with Respondent's staff Patient 1 stated
6 the left side of her right foot was hurting badly, and she could not put any pressure on her foot.
7 Patient 1 texted Respondent's staff that she wanted to text Respondent, but the last time she
8 texted Respondent, he informed her not to text unless there was an emergency, so she called
9 Respondent's office instead. Respondent's staff made an appointment on Monday for Patient 1 to
10 see Respondent.

11 54. Respondent then texted his staff and instructed them to document that he had called
12 and spoken with Patient 1, who stated her foot was swollen and painful around her big toe. The
13 patient told Respondent she had gone on a trip the week before and had not experienced any
14 problems. The Respondent texted his staff and instructed them to document that he told Patient 1
15 to send him a picture of her foot. The Respondent looked at the picture and told Patient 1 to keep
16 her foot elevated to reduce swelling and to see him on Monday.

17 55. Respondent texted his staff that Patient 1 had asked again about removing the screw,
18 and he told her the screw would not be removed unless enough stability was noted at the
19 osteotomy site after the next X-rays were reviewed.

20 56. Expert Dr. 1 examined a chart note dated September 27, 2019, where Patient 1 denied
21 pain. The Respondent removed the dressing and found that the incision site was normal. Patient
22 1 said she was going to Europe for two and a half weeks, and Respondent again Patient 1 to avoid
23 the plane trip. Patient 1 stated she was satisfied with the results of the surgery.

24 57. The September 27, 2019, note was electronically signed by Respondent over two
25 years later, on March 7, 2022, at 04:11 PM PST [sic].

26 58. Expert Dr. 1 examined a chart note dated October 18, 2019, which included Patient
27 1's informed consent for a minimal and ultimately unsuccessful attempt to remove the hardware
28 from the patient's foot. The Respondent's note states Patient 1 will be scheduled to remove

1 hardware in the operating room.

2 59. The October 18, 2019, note was electronically signed by Respondent over two years
3 later, on March 7, 2022, at 04:11 PM PST [sic].

4 60. Expert Dr. 1 examined a chart note dated October 22, 2019, from Patient 1's visit.
5 The note has Dr. 2's name preprinted at the top next to the date of the visit. The note states in
6 part: "The patient is here for a second opinion. She had bunion, bunionette and hammertoe
7 surgeries by Dr. Busconi [sic]."

8 61. The October 22, 2019, note discusses the visit and indicates Patient 1's history related
9 to the surgery Respondent performed. The note states that there is edema on both sides of Patient
10 1's right foot. The note states the patient's neurovascular status is intact except the patient has
11 decreased sensation along the incision and there is some weakness in the patient's range of
12 motion but no crepitus. The note states the patient's foot appears to have good healing and that it
13 is possibly the hardware that is bothering her. The screws are in place and there is a slight hallux
14 abductus angle. No signs of any nonunion or delayed union were noted and a CT scan was
15 requested.

16 62. The October 22, 2019, note states the recommended treatment is to avoid certain
17 activities such as running and jumping. The note further states that the patient's pain may not
18 entirely be related to the screws and further bone surgery is being considered to realign the bone.
19 The note recommended that the pin be removed in four weeks and then the screw will stay in for
20 three to four months. Thereafter the screw would be removed if there is imaging which shows
21 that the osteotomy seems to be healing.

22 63. The October 22, 2019, note was electronically signed over two years later, on March
23 7, 2022, at 04:11 PM PST [sic] by provider Dr. 2.

24 64. Expert Dr. 1 examined a chart note dated October 29, 2019, from Patient 1's visit.
25 The note has Dr. 2's name preprinted at the top next to the date of the visit. The note states in
26 part: " 'P1' is here for follow-up of the CT Scan that I ordered. Dr. Bastoni [sic]. I told the patient
27 on multiple occasions that I am only here to help her. From hereon [sic], I have no responsibility
28 and my goal is to help her get the screws out that are bothering her. But I cannot promise her if

1 that would alleviate her pain that she is having right now. I will help her improve her current pain
2 that she is having if this is related to her hardware. Once the hardware is removed she will feel a
3 lot better. But at the end of the day I do not want her to keep me responsible for her previous
4 surgery. Some of the aches and pains may be related to that and it may not go away."

5 65. The October 29, 2019 note also states, "I explained to her the pros and cons and all
6 the alternatives of the surgery and she is going to let me know when she wants to move forward
7 with this."

8 66. The October 29, 2019, note was electronically signed over two years later, on March
9 7, 2022, at 04:11 PM PST [sic] by provider Dr. 2.

10 67. Expert Dr. 1 examined additional patient records, including X-rays showing screw
11 fixation postoperatively and arthroplasty of the fifth toe. The copies are dark and hard to see
12 detail but appeared to be dated September 29, 2019, and one other from October 22, 2019.

13 68. Expert Dr. 1 examined additional patient records, including an October 31, 2019,
14 EKG, blood tests, and a medical examination from Dr. 4.

15 69. Expert Dr. 1 reviewed the transcript of the Respondent's November 15, 2022, Subject
16 interview.

17 STANDARD OF CARE

18 70. The standard of care regarding documentation of which provider evaluated a patient
19 requires the chart note to correctly identify the provider who performed the services on the
20 patient, no matter the size of the provider group. Provider billing forms have separate sections for
21 the provider to list both the group, if any, the provider belongs to and the identity of the provider
22 who rendered services to the patient. Failure to properly identify which provider performed
23 patient services does not allow for accurate records regarding patient doctor communications,
24 examination findings, and whether the physician is properly credentialed.

25 71. The standard of care with regard to clear identification of a chart note requires the
26 chart note clearly identify the date the service was rendered, that the note be created in a timely
27 manner, and that the provider accurately signs the chart note.

28 72. The standard of care with regard to informed consent requires that the physician

1 ensure that the patient is told what their condition is, the various options that can be utilized to try
2 to fix that condition and that the patient is given the risks and benefits of each of those options.
3 This information needs to be provided to the patient in "layman's language" the patient can
4 understand to permit the patient to make an informed decision as to the care the patient wants to
5 accept.

6 73. The standard of care with regard to appropriate preoperative, postoperative and
7 medical condition of the patient required the physician to consider the type of surgery that will be
8 performed, the patient's overall medical condition, and the patient's preoperative and
9 postoperative plans.

10 FIRST CAUSE FOR DISCIPLINE

11 (Gross Negligence)

12 74. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
13 the Code, in that he was grossly negligent when he engaged in the conduct described above in
14 paragraphs 20 through 66, including but not limited to, the following:

15 A. Respondent's June 26, 2019, note for Patient 1's initial visit which Respondent
16 signed over two years later by a different provider.

17 B. All of Patient 1's 2019 dates of service were signed over two years after the
18 dates of services.

19 C. Respondent's failure to create Patient 1's chart notes in a timely fashion.

20 D. Respondent's failure to accurately edit Patient 1's chart notes.

21 E. Respondent's failure to explain Patient 1's recommended bunion and hammer
22 toe surgery in language Patient 1 could understand.

23 F. Respondent's failure to document the specific language used to explain Patient
24 1's recommended bunion and hammer toe surgery to Patient 1.

25 G. Respondent's failure to appropriately assess Patient 1's medical condition prior
26 to performing surgery.

27 H. Respondent's failure to order weight bearing preoperative X-rays.

28 I. Respondent's failure to appropriately assess the timing of Patient 1's proposed

1 surgery in light of Patient 1's postoperative schedule.

2 75. Respondent's acts and/or omissions as set forth in paragraphs 20 through 66, above,
3 whether proven individually, jointly, or in any combination thereof, constitute gross negligence
4 pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Repeated Negligent Acts)**

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

10 A. Respondent's June 26, 2019, note for Patient 1's initial visit with Respondent
11 signed over two years later by a different provider.

12 B. All of Patient 1's 2019 dates of service signed over two years after the dates of
13 services.

14 C. Respondent's failure to create Patient 1's chart notes in a timely fashion.

15 D. Respondent's failure to accurately edit Patient 1's chart notes.

16 E. Respondent's failure to explain Patient 1's recommended bunion and hammer
17 toe surgery in language Patient 1 could understand.

18 F. Respondent's failure to document the specific language used to explain Patient
19 1's recommended bunion and hammer toe surgery to Patient 1.

20 G. Respondent's failure to appropriately assess Patient 1's medical condition before
21 performing surgery.

22 H. Respondent's failure to order weight bearing preoperative x-rays.

23 I. Respondent's failure to appropriately assess the timing of Patient 1's proposed
24 surgery in light of Patient 1's postoperative schedule.

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

27 78. Respondent's acts and/or omissions as set forth in paragraphs 20 through 66 above,
28 whether proven individually, jointly, or in any combination thereof, constitute repeated negligent

1 acts, pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Failure to Maintain Adequate and Accurate Records)**

4 79. Respondent is subject to disciplinary action under Code section 2266, in that he failed
5 to maintain adequate and accurate records relating to the services he provided to Patient 1. The
6 circumstances are as follows:

7 80. Complainant refers to and, by this reference, incorporates paragraphs 20 through 66,
8 above, as though set forth fully herein.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 81. Respondent is subject to disciplinary action under section 2234 of the Code, in that
12 Respondent engaged in unprofessional conduct. The circumstances are as follows:

13 82. The allegations of the First, Second, and Third Causes for Discipline are incorporated
14 herein by reference as if fully set forth.

15 83. Respondent's acts and/or omissions as set forth in in paragraphs 20 through 66,
16 whether proven individually, jointly, or in any combination thereof, constitute unprofessional
17 conduct.

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1 **PRAYER**

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


4 1. Revoking or suspending Podiatrist License Number DPM 5477, issued to Michael
5 Bastani, D.P.M.;

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

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

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

12
13 DATED: **OCT 03 2023**

14 
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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