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

In the Matter of the Accusation Against: **WILLIAM D. PAGLIANO, D.P.M.** 1245 Wilshire Boulevard, Suite 810 Los Angeles, CA 90017 Doctor of Podiatric Medicine License No. E-1517, Respondent.	Case No. 1B-1996-70346 **FIRST AMENDED ACCUSATION**

The Complainant alleges:

PARTIES

1. Complainant, James Rathlesberger, is the Executive Officer of the California Board of Podiatric Medicine, Department of Consumer Affairs (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about July 28, 1972, Doctor of Podiatric Medicine License No. E-1517 was issued by the Board to William D. Pagliano, D.P.M. (hereinafter "respondent"). At all times relevant to the charges brought herein, this license has been in full force

and effect. Unless renewed, it will expire on July 31, 2000.

JURISDICTION

3. This accusation is brought before the Board under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

A. Code section 2222 in part provides:

"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.

"* * * * * *"

B. Code section 2497 provides:

"(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."

C. Code section 2234 provides that unprofessional conduct includes, but is not limited to, the following:

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

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"* * * * * *"

D. Code section 725 in part provides:

"Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct or a

physician and surgeon, dentist, podiatrist, physical therapist, chiropractor, or optometrist. . . ."

E. Code section 2242 in part provides:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

"* * * * * *"

F. Code section 4022 in part provides:

"`Dangerous drug' or `dangerous drugs' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: `Caution: federal law prohibits dispensing without prescription' or words of similar import.

"(b) Any device that bears the statement: `Caution: federal law restricts this device to sale by or on the order of a _____,' or words of similar import, the blank to be filled with the designation of the practitioner licensed to use or order use of the device.

"(c) Any drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

G. Code section 2241 in part provides:

"Unless otherwise provided by this section, the prescribing, selling, furnishing, giving away, or

administering or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds mentioned in Section 2239 to an addict or habitue constitutes unprofessional conduct.

"* * * * * *"

H. Code section 2239 in part provides:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct."

"* * * * * *"

I. Code section 2238 provides:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

/ /

J. Code section 2266 provides:

"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."

K. Code section 2497.5 in part provides:

"(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."

L. Code section 2227 provides in part that a licensee who is found guilty under the Medical Practice Act may be placed on probation and be required to pay the costs of probation monitoring.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

4. Respondent is subject to disciplinary action under subdivision (b) of Code section 2234 for gross negligence in that he prescribed controlled substances for patient M.D.[1] without documenting or otherwise justifying the medical necessity for the

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1. In this Accusation, the patients will be referred to by initials. The full names of the patients will be disclosed to respondent when discovery is provided pursuant to Government Code section 11507.6.

drugs. With respect to patient N.C., respondent was grossly negligent in his pre-surgical, surgical, and post-surgical management, treatment and care of patient N.C. which resulted in the amputation of the patient's great right toe. The circumstances are as follows:

Patient M.D.

A. On or about April 30, 1996, M.D. presented to respondent for an ingrown toenail and was treated with tetracycline. M.D. presented again to respondent on or about October 18, 1996 where he was diagnosed with an ankle sprain and was given a prescription for Talwin. According to the medical record respondent maintained for M.D., M.D. telephoned respondent on November 19 for additional pain medication and respondent prescribed 20 tablets of "Emphrine-4" (sic) (Empirin with codeine). The medical record further reflected that on November 29, M.D. telephoned respondent for additional Empirin and became irate when his refill request was refused.

B. M.D.'s prescription drug profile shows that respondent prescribed 20 codeine phosphate tablets for M.D. on November 19, November 26, November 29, December 3, and December 9, for a total of 100 tablets over a three-week period. Codeine phosphate is a Schedule V controlled substance under California Health and Safety Code section 11058. Other than the November 19 documentation for "Emphrine-4," there is no documentation in M.D.'s medical record for the prescriptions of November 26, November 29,

December 3, and December 9.

C. The standard of practice for a podiatrist requires that all prescribed medication be justified and warranted for a specific podiatric condition. It is the podiatrist's responsibility to conduct a thorough physical examination, including a past medical history, current medications, hospitalizations, and allergies, in order to make a reasonable diagnosis and treatment plan. Any medication prescribed should correspond to the podiatric problem diagnosed.

D. Respondent was grossly negligent, both individually and collectively for (1) issuing prescriptions for codeine phosphate, a controlled substance, on November 26, November 29, December 3, and December 9, without a prior good faith examination or medical indication for the drugs, and (2) failing to document in M.D.'s medical chart the prescriptions issued for these dates and the medical condition for which the prescriptions were issued.

Patient N.C.

E. On or about October 7, 1996, N.C., then age 37, presented to respondent with complaints of pain in the large toe of his right foot due to a recurring bump on the outside base of the toe associated with a bone spur. The toe was congenitally enlarged and previous reduction surgery by another health care practitioner when N.C. was a teenager had been unsuccessful. According to N.C., it was made clear to respondent that he only wanted to have the bump removed and

did not want any further surgery to reduce the congenital enlargement.

F. On the initial visit, respondent diagnosed a congenitally enlarged hallux (big toe), partial regeneration of hallux nail, very thick scar from the previous surgery around right hallux, and multiple exostosis (bony growth arising from surface of a bone) around hallux and sesamoids (bone embedded in a tendon or capsule of a joint). Respondent recommended a revisional procedure of the matrix and exostosis.

G. Respondent and N.C. conferred again concerning the scope of the surgery on November 20 and November 27. In a surgical consent form with respondent's letterhead signed by N.C. on November 27, respondent described the procedures to be performed and the risks of the surgery as "Partial excision of cicatrix and granulative tissue. Excision of bone spurs - right hallux. There is no guarantee of size reduction or maintaining (loss of) right hallux." In a second consent form on Henry Mayo Newhall Memorial Hospital (Henry Mayo) stationary, with N.C.'s signature and dated November 27, the procedures were as described on respondent's consent form with the exception of the last sentence referring to "no guarantee of size reduction or maintaining (loss of) right hallux." The surgery was performed as an outpatient procedure on December 13 at Henry Mayo in Valencia. On a consent form dated December 13, respondent again documented, this time in handwriting, the procedures to be performed as "Partial

excision of cicatrix and granulative tissue. Excision of bone spurs Right Hallux." Again there was no mention of size reduction or possible loss of the toe. On the consent form he recalled signing, N.C. did not remember seeing any mention of surgery to or the possible loss of the toe. N.C. also stated that respondent never discussed with him the possibility of losing any of his toes.

H. The operative report prepared by respondent for the December 13 surgery which he performed described the surgery as "REVISIONAL REDUCTION OF DACTYLOMEGALY OF THE RIGHT HALLUX" and enumerated the seven surgical procedures performed as follows:

"A. TOTAL RESECTOMY OF THE RIGHT HALLUX.

"B. EXOSTECTOMIES OF THE MEDIAL AND LATERAL DISTAL ASPECTS OF THE DISTAL PHALANX OF THE RIGHT HALLUX.

"C. EXOSTECTOMIES OF THE MEDIAL AND LATERAL PLANTAR ASPECTS OF THE PROXIMAL PHALANX OF THE RIGHT HALLUX.

"D. EXCISION OF VERY THICK CICATRIX MEDIAL LATERAL ASPECT OF THE RIGHT HALLUX.

"E. EXCISION OF PLANTAR METATARSAL BAR-SESAMOID, RIGHT HALLUX.

"F. ARTHRODESIS OF THE IP JOINT OF THE RIGHT HALLUX.

"G. MODIFIED SKIN FLAP DISTAL-DORSAL ASPECT OF THE RIGHT HALLUX."

I. The surgery performed exceeded the scope of the consents bearing N.C.'s signatures. Macrodactyly, the congenital enlargement or overdevelopment of the toe, was the medical condition which was surgically addressed by respondent

by what he termed in the operative report as "REVISIONAL REDUCTION OF DACTYLOMEGALY OF THE RIGHT HALLUX." This is a complicated procedure requiring special care and previous experience. Respondent acknowledged that this was the first time he had performed that specific procedure. It requires a multi-discipline approach utilizing specialized orthopedic and plastic surgery techniques. The medical literature recommends a stepped approach allowing three months between surgeries to avoid vascular complications. In the case of N.C., respondent was aware as noted in his pre-surgical evaluation that the neurological and vascular status of the toe was diminished.

J. Following the surgery on December 13, N.C. experienced considerable pain in the surgical toe but respondent nonetheless discharged him to his home. Respondent explained that he noted some ischemia in the toe and ordered N.C. to keep the foot dependent or dangling. By early morning on December 15, the pain was so excruciating that N.C. was admitted to Henry Mayo and then transferred by ambulance on December 16 to St. Vincent's Medical Center in Los Angeles which had better facilities. At St. Vincent's, the toe was determined to be necrotic because of vascular compromise resulting in gangrene. Notwithstanding the presence of gangrene, respondent discharged N.C. to his home from St. Vincent's on December 20. After consultations with other physicians, N.C. was admitted to Valley Presbyterian Hospital on December 24 to have the toe amputated. On December 26, the

toe was amputated at the metatarsophalangeal joint by Dr. Jonathan Jaivin, an orthopedic surgeon, with Dr. Karen Dennis, a plastic surgeon assisting.

K. The standard of practice is that a surgical consent form fully inform the patient of the surgical procedure to be performed and to contain an explanation of the possible complications. A simple diagram of the procedure should be illustrated and initialed by the patient. Alternative methods of treatment should also be listed with discussion of expected surgical results. The standard of practice for surgically addressing macrodactyly requires extensive pre-operative testing including Doppler vascular examination and three-dimensional computed tomography imaging. The standard of practice for addressing the post-operative vascularity of N.C.'s great right toe is to re-establish vascular profusion by removal of all restrictive dressings and hardware that may be impeding blood flow accompanied by immediate hospitalization. Respondent's recommendation that N.C. put the right leg in a dependent position is an extreme departure from the standard of care in that the leg should have been elevated to prevent venous congestion and facilitate the increase in arterial profusion.

L. Respondent was grossly negligent based on the following acts and omissions, both individually and collectively, as follows: **(1)** respondent failed to perform appropriate pre-operative evaluations including Doppler, MRI, or outside consultation; **(2)** respondent failed to properly

inform N.C. of the primary surgical procedure either verbally or in the surgical consent forms; (3) respondent performed surgery which exceeded the scope of the procedures delineated in the surgical consent forms; (4) respondent failed to recognize the complex pathology involved in macrodactyly and performed excessive and damaging surgery which resulted in amputation; and (5) respondent failed to recognize and properly address the avascularization in N.C.'s toe which was evident on post-operative evaluation.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

5. Respondent is subject to disciplinary action under subdivision (c) of Code section 2234 for repeated negligent acts with respect to patients M.D. and N.C. The circumstances are as follows:

Patient M.D.

A. The facts and allegations in paragraph 4, subparagraphs A through D, inclusive, are incorporated here by reference.

B. Respondent was negligent, both individually and collectively for (1) issuing prescriptions for codeine phosphate, a controlled substance, on November 26, November 29, December 3, and December 9, without a prior examination or medical indication for the drugs, and (2) failing to document in M.D.'s medical chart the prescriptions issued for these dates and the medical condition for which the prescriptions were issued.

Patient N.C.

C. The facts and allegations in paragraph 4, subparagraphs E through L, inclusive, are incorporated here by reference.

D. Respondent was negligent based on the following acts and omissions, both individually and collectively, as follows: **(1)** respondent failed to perform appropriate pre-operative evaluations including Doppler, MRI, or outside consultation; **(2)** respondent failed to properly inform N.C. of the primary surgical procedure either verbally or in the surgical consent forms; **(3)** respondent performed surgery which exceeded the scope of the procedures delineated in the surgical consent forms; **(4)** respondent failed to recognize the complex pathology involved in macrodactyly and performed excessive and damaging surgery which resulted in amputation; and **(5)** respondent failed to recognize and properly address the avascularization in N.C.'s toe which was evident on post-operative evaluation.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

6. Respondent is subject to disciplinary action under subdivision (d) of Code section 2234 for incompetence with respect to patients M.D. and N.C. The circumstances are as follows:

Patient M.D.

A. The facts and allegations in paragraph 4, subparagraphs A through D, inclusive, are incorporated here by reference.

Patient N.C.

B. The facts and allegations in paragraph 4, subparagraphs E through L, inclusive, are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE

(Prescribing Drugs Without a Good Faith Prior Examination)

8. Respondent is subject to disciplinary action under Code section 2242 for prescribing dangerous drugs to M.D. without having conducted a prior good faith examination and indicating a medical justification for the medication. The circumstances are as follows:

A. The facts and allegations in paragraph 4, subparagraphs A through D, inclusive, are incorporated here by reference.

FIFTH CAUSE FOR DISCIPLINE

(Repeated Acts of Clearly Excessive Prescribing)

9. Respondent is subject to disciplinary action under Code section 725 for repeated acts of excessive prescribing of drugs to patient M.D. The circumstances are as follows:

A. The facts and allegations in paragraph 4, subparagraphs A through D, inclusive, are incorporated here by reference.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

10. Respondent is subject to disciplinary action under Code section 2266 for failing to maintain adequate records with respect to patients M.D. and N.C. The circumstances are as

follows:

Patient M.D.

A. The facts and allegations in paragraph 4, subparagraphs A through D, inclusive, are incorporated here by reference.

Patient N.C.

B. The facts and allegations in paragraph 4, subparagraphs E through L, inclusive, are incorporated here by reference.

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PRAYER

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

1. Revoking or suspending Doctor of Podiatric Medicine License Number E-1517, heretofore issued to respondent;

2. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as the Board deems necessary and proper.

DATED: July 26, 2000.

JOHN E. DeCURE
Deputy Attorney General
Office of the Attorney General
on behalf of

James Rathlesberger
Executive Officer
Board of Podiatric Medicine
Department of Consumer Affairs
State of California

Complainant