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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 7 2018
BY R. Fitzwater ANALYST

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **JOHN EDWARD EBAUGH, D.P.M.** 81-709 Dr. Carreon Blvd., Suite D-3 Indio, CA 92201 Doctor of Podiatric Medicine License No. E 4495, Respondent.	Case No. 500-2018-000669 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Brian Naslund (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs, State of California (Board).

2. On or about June 5, 2003, the Board issued Doctor of Podiatric Medicine License Number E 4495 to John Edward Ebaugh, D.P.M. (Respondent). The Podiatrist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

3. In a disciplinary action entitled In the Matter of the Accusation Against: John Edward Ebaugh, D.P.M., Case No. 500-2014-000082, the Board issued an April 14, 2017 Decision and Order (Probation Order), effective May 14, 2017, in which Respondent's Doctor of Podiatric Medicine License was revoked. However, revocation was stayed and Respondent's license was placed on probation for three (3) years with certain terms and conditions. A copy of the Probation Order is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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 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 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."

7. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

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

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption 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.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

8. This Accusation and Petition to Revoke Probation is further brought before the Board under the authority of the Board's Decision and Order in Case No. 500-2014-000082, OAH No. 2016020933, which provides, in pertinent part,

"13. VIOLATION OF PROBATION If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against Respondent."

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."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Gross Negligence)

10. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient 1.[1] The circumstances are as follows:

11. Patient 1 first presented to Respondent on or about January 28, 2015, complaining of ingrown toenails. During subsequent visits on February 16, 2015, and February 23, 2015, Patient 1 discussed bunionectomy[2] with Respondent. On March 12, 2015, she underwent a left foot bunion surgery with Respondent. According to Respondent's March 12, 2015 operative

[1] The patient is anonymized by her initials to protect her privacy.

[2] Bunionectomy is the surgery performed to remove bunions. A bunion is a growth, or an unnatural enlargement of the first joint at the base of the big toe. Bunions push the bones in the big toe out of line, causing the toe to curve inward toward the others.

report, the patient had an uncomplicated Chevron bunionectomy,[3] left foot fixated via a 0.062 k-wire, lasting 32 minutes in duration. No tendon laceration was documented.

12. At the initial post-operative visit on March 16, 2015, Patient 1 was unable to move her big toe. Respondent informed her that he may have cut her tendon. During subsequent visits to Respondent's office in March and April 2015, Patient 1 insisted that the tendon be repaired. However, Respondent resisted, informing Patient 1 that he preferred to wait until a new provider joined his practice and stating that he was very busy, but would place her on the surgical schedule. Patient 1's last visit with Respondent was on or about April 27, 2015. At no time did Respondent inform Patient 1 that a metal pin had been used to hold the bone from the bunion surgery.

13. On April 29, 2015, Patient 1 obtained a second opinion from Dr. G.K.[4] Dr. G.K. requested the patient's medical records from Respondent. In June 2015, Respondent's office advised Dr. G.K. that they had lost all of Patient 1's medical records due to a computer crash except for the non-weight bearing radiographs dated January 22, 2015, which were eventually provided to Dr. G.K. The radiographs did not exhibit retained fixation, but revealed a mild bunion seemingly amenable to an Austin/Chevron bunionectomy.[5]

14. The April 29, 2015 records from Dr. G.K. included a problem list with entries dated August 22, 2016 ("ingrowing nail"), August 9, 2016 ("spontaneous rupture of other tendons, unspecified ankle and foot"), November 17, 2015 ("traumatic tear of extensor tendon") and August 3, 2015 ("painful fixation foot"). Dr. G.K. documented "no muscle activity to the

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[3] The procedure is commonly performed in cases of a mild to moderate bunion deformity. An incision is made over the big toe joint and soft-tissue is released, and the bump of bone from the side of the first metatarsal head is removed. Once this is completed, an osteotomy (bone cut) is performed through the first metatarsal that will allow shifting the bone and realigning the joint. A pin or screw is used to hold the cut bone in the corrected position while it heals. Any sharp points are then removed to avoid future irritation and provide smooth motion of the joint.

[4] The individual is identified by his initials to protect his privacy.

[5] The Austin bunionectomy is also known as a Chevron procedure or Long Arm Osteotomy.

extensor hallucis longus tendon[6] on the left foot" and a "palpable pin fixation to the left first metatarsal with a small ulceration of the skin in this area."

15. On May 26, 2015, Dr. G.K. performed a pre-operative exam and noted a duplicate problem list from April 29, 2015.

16. On June 19, 2015, Dr. G.K. reportedly removed a retained 0.062 k-wire and excised the redundant portion of a partially healed but lengthened extensor tendon that was repaired via multiple simple interrupted 3-0 vicryl sutures.[7]

17. On July 6, 2015, Patient 1's sutures were removed. She was seen post-operatively again by Dr. G.K. on July 13, 2015, and August 3, 2015. The August 3, 2015 procedure notes stated, "The doctor examined where the incision site was located and it is healing nicely." The care plans were as follows: "The patient will be receiving right foot surgery."

18. Dr. G.K.'s September 9, 2015 pre-operative note for Patient 1 described weakness of the left extensor halluces longus tendon, which complaint remained unchanged during post-operative visits in September 2015, October 2015, November 2015, January 2016, and June 2016.

19. The Austin/Chevron bunionectomy is likely the most commonly performed procedure at the first metatarsophalangeal joint. The indication for the procedure is vast for a wide degree of deformity and level of osteoarthritis. There are multiple fixation options, including pins, staples, screws and plates. Laceration of the extensor halluces longus is a known complication. If laceration occurs, it is the standard of care to identify and repair the tendon.

20. Respondent's failure to identify the tendon laceration at the time of surgery constitutes an extreme departure from the standard of care.

21. Metallic fixation is commonly placed during performance of bunionectomies and other foot surgeries. At times, it has the intent or potential to be permanent and at times it is intended to be temporary. If fixation intended to be permanent migrates and becomes prominent

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[6] The extensor hallucis longus is a thin muscle, situated between the tibialis anterior and the extensor digitorum longus, that functions to extend the big toe and dorsiflex the foot, and assists with foot eversion and inversion.

[7] Vicryl sutures are a synthetic absorbable sterile surgical suture composed of a copolymer made from 90% glycolide and 10% L-lactide.

or otherwise bothersome, it is the standard of care to discuss this finding with the patient, and often, to remove the fixation.

22. Dr. G.K. described an ulceration caused by the k-wire placed by Respondent during Patient 1's initial visit on April 29, 2015, and documented the removal of the k-wire during the June 19, 2015 surgery. The ulceration documented by Dr. G.K. a few days following Patient 1's last visit with Respondent suggests that Respondent should have identified and discussed the likelihood of or documented the existence of fixation failure with Patient 1 during her last visit with him on April 27, 2015.

23. Respondent's failure to identify and discuss fixation failure with Patient 1, resulting in an ulceration, constitutes an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – General)

24. Respondent is subject to disciplinary action under section 2234, subdivision (a), of the Code, in that he committed general unprofessional conduct in his care and treatment of Patient 1. The circumstances are as follows:

25. The allegations contained in paragraphs 10 through 23 herein are incorporated by reference in their entirety.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Enroll in and Complete Medical Record Keeping Course)

26. At all times after the effective date of Respondent's probation, Condition 1 of the Probation Order stated:

> "1. MEDICAL RECORD KEEPING COURSE Within 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 during the first 6 months of probation is a violation of probation.
>
> 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 not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later."

27. Respondent's probation is subject to revocation because he failed to comply with Condition 1, referenced above. The Board's Decision became effective on April 14, 2017. As of July 31, 2018, Respondent has not enrolled in or completed a medical record keeping course.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Complete Clinical Training Program)

28. At all times after the effective date of Respondent's probation, Condition 2 of the Probation Order stated:

"2. CLINICAL TRAINING PROGRAM Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's specialty or sub-specialty; and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of podiatric medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. The Program's determination whether or not Respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after Respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation."

29. Respondent's probation is subject to revocation because he failed to comply with Condition 2, referenced above. Respondent enrolled in the clinical training program on September 1, 2017, but failed to complete the course within six months of that date.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Comply with Practice Monitoring Program)

30. At all times after the effective date of Respondent's probation, Condition 3 of the Probation Order stated:

"3. MONITORING – PRACTICE Within 30 days of the effective date of this Decision, the entire practice shall be monitored, including, but not limited to the following: medical records, charting, pre and postoperative evaluations, and all surgical procedures.

The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor of podiatric medicine from its panel of medical consultants or panel

of expert reviewers as the monitor.

The monitor shall provide quarterly reports to the Board or its designee which include an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of podiatric medicine and whether Respondent is practicing podiatric medicine safely.

The Board or its designee shall determine the frequency and practice areas to be monitored. Such monitoring shall be required during the entire period of probation. The Board or its designee may at its sole discretion also require prior approval by the monitor of any medical or surgical procedures engaged in by the Respondent. Respondent shall pay all costs of such monitoring and shall otherwise comply with all requirements of his or her contract with the monitor, a copy of which is attached as "Appendix A - Agreement to Monitor Practice and/or Billing." If the monitor terminates the contract, or is no longer available, the Board or its designee shall appoint a new monitor immediately. Respondent shall not practice at any time during the probation until the Respondent provides a copy of the contract with the current monitor to the probation investigator and such contract is approved by the Board.

Respondent shall provide access to the practice monitor of Respondent's patient records and such monitor shall be permitted to make direct contact with any patients treated or cared for by Respondent and to discuss any matters related to Respondent's care and treatment of those patients. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to provide to the Board or its designee any relevant information. If the practice monitor deems it necessary to directly contact any patient, and thus require the disclosure of such patient's identity, Respondent shall notify the patient that the patient's identity has been requested pursuant to the Decision. This notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by Respondent and a copy of such notification shall be

maintained in each patient's file. The notifications signed by Respondent's patients shall be subject to inspection and copying by the Board or its designee at any time during the period of probation that Respondent is required to comply with this condition. The practice monitor will sign a confidentiality agreement requiring him or her to keep all patient information regarding Respondent's patients in complete confidence, except as otherwise required by the Board or its designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

In lieu of a monitor, Respondent may participate in the professional enhancement program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation."

31. Respondent's probation is subject to revocation because he failed to comply with Condition 3, referenced above. Respondent had one site visit from a practice monitor on May 12, 2017, but has not had a site visit since then due to his health and non-practice.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Make Cost Recovery Payments)

32. At all times after the effective date of Respondent's probation, Condition 14 of the Probation Order stated:

"14. COST RECOVERY Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, Respondent shall reimburse the Board the amount of $11,403.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve the Respondent of his/her obligation to reimburse the Board for its costs."

33. Respondent's probation is subject to revocation because he failed to comply with Condition 14, referenced above. On August 30, 2017, Respondent signed a payment agreement which states, in part, "Ebaugh shall pay the Board $407.25 per month for 28 months until paid in full. The first payment of $407.25 is due with the signing of this agreement and no later than August 31, 2017." To date, Respondent has made cost recovery payments to the Board totaling $2,036.25, and currently owes the Board $9,366.75 in cost recovery. Respondent has not made a payment pursuant to the agreement since December 2017.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Make Probation Monitoring Cost Payments)

34. At all times after the effective date of Respondent's probation, Condition 16 of the Probation Order stated:

> "16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation."

35. Respondent's probation is subject to revocation because he failed to comply with Condition 16, referenced above. To date, Respondent has not made any probation monitoring cost payments to the Board. As of July 31, 2018, he owes the Board $971.28 in probation monitoring costs.

DISCIPLINE CONSIDERATIONS

36. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 14, 2017, in a prior disciplinary action entitled *In the Matter of the Accusation Against John E. Ebaugh, D.P.M.* before the Board of Podiatric Medicine, in Case Number 500-2014-000082, Respondent's license was revoked, stayed, and placed on probation for three (3) years. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking the probation that was granted by the Board of Podiatric Medicine in Case No. 500-2014-000082 and imposing the disciplinary order that was stayed, thereby revoking Doctor of Podiatric Medicine License No. E 4495; issued to John Edward Ebaugh, D.P.M.

2. Revoking or suspending Doctor of Podiatric Medicine License Number E 4495, issued to John Edward Ebaugh, D.P.M.;

3. Ordering John Edward Ebaugh to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5; and,

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

DATED: August 7, 2018

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

Exhibit A

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

In the Matter of the Accusation Against:	)	
JOHN E. EBAUGH, D.P.M.	)	Case No. 500-2014-000082
Doctor of Podiatric Medicine License No. E 4495	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of Board of Podiatric Medicine, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 14, 2017.

IT IS SO ORDERED March 17, 2017.

BOARD OF PODIATRIC MEDICINE

By: Michael A. Zapf, DPM

Michael A. Zapf, DPM, President

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

In the Matter of the Accusation Against: **JOHN E. EBAUGH, D.P.M.** **81-709 Dr. Carreon Blvd., Suite D3** **Indio, CA 92201** **Doctor of Podiatric Medicine** **License No. E 4495,** Respondent.	Case No. 500-2014-000082 OAH No. 2016020933 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Brian Naslund (Complainant) is the Executive Officer of the Board of Podiatric Medicine (Board). Jason S. Campbell, J.D., the Executive Office of the Board at the time of the filing of the Accusation, brought this action solely in his official capacity. Complainant is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Christina L. Sein, Deputy Attorney General.

2. Respondent John E. Ebaugh, D.P.M. (Respondent) is represented in this proceeding by attorney C. Keith Greer, Esq., whose address is: 17150 Via Del Campo, Suite 100 San Diego, CA 92127.

3. On or about June 5, 2003, the Board issued Doctor of Podiatric Medicine License No. E 4495 to Respondent. The Doctor of Podiatric Medicine License was in full force and effect at all times relevant to the charges brought in Accusation No. 500-2014-000082, and will expire on March 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 500-2014-000082 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 10, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 500-2014-000082 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 500-2014-000082. Respondent has also carefully read, fully discussed with 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. 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 the charges and allegations contained in Accusation No. 500-2014-000082 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 500-2014-000082 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Podiatric Medicine. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Podiatric Medicine may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Doctor of Podiatric Medicine No. E 4495 issued to Respondent John E. Ebaugh, D.P.M. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. MEDICAL RECORD KEEPING COURSE Within 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 during the first 6 months of probation is a violation of probation.

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 not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. CLINICAL TRAINING PROGRAM Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's specialty or sub-specialty; and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of podiatric medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall

submit to and pass an examination. The Program's determination whether or not Respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after Respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

3. MONITORING - PRACTICE Within 30 days of the effective date of this Decision, the entire practice shall be monitored, including, but not limited to the following: medical records, charting, pre and postoperative evaluations, and all surgical procedures.

The Board shall immediately, within the exercise of reasonable discretion, appoint a doctor of podiatric medicine from its panel of medical consultants or panel of expert reviewers as the monitor.

The monitor shall provide quarterly reports to the Board or its designee which include an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of podiatric medicine and whether Respondent is practicing podiatric medicine safely.

The Board or its designee shall determine the frequency and practice areas to be monitored. Such monitoring shall be required during the entire period of probation. The Board or its designee may at its sole discretion also require prior approval by the monitor of any medical or surgical procedures engaged in by the Respondent. Respondent shall pay all costs of such monitoring and shall otherwise comply with all requirements of his or her contract with the monitor, a copy of which is attached as "Appendix A - Agreement to Monitor Practice and/or Billing." If the monitor terminates the contract, or is no longer available, the Board or its designee shall appoint a new monitor immediately. Respondent shall not practice at any time during the probation until the Respondent provides a copy of the contract with the current monitor to the probation investigator and such contract is approved by the Board.

Respondent shall provide access to the practice monitor of Respondent's patient records and such monitor shall be permitted to make direct contact with any patients treated or cared for

by Respondent and to discuss any matters related to Respondent's care and treatment of those patients. Respondent shall obtain any necessary patient releases to enable the monitor to review records and to make direct contact with patients. Respondent shall execute a release authorizing the monitor to provide to the Board or its designee any relevant information. If the practice monitor deems it necessary to directly contact any patient, and thus require the disclosure of such patient's identity, Respondent shall notify the patient that the patient's identity has been requested pursuant to the Decision. This notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by Respondent and a copy of such notification shall be maintained in each patient's file. The notifications signed by Respondent's patients shall be subject to inspection and copying by the Board or its designee at any time during the period of probation that Respondent is required to comply with this condition. The practice monitor will sign a confidentiality agreement requiring him or her to keep all patient information regarding Respondent's patients in complete confidence, except as otherwise required by the Board or its designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

In lieu of a monitor, Respondent may participate in the professional enhancement program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of podiatric medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive

Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. PHYSICIAN ASSISTANTS Prior to receiving assistance from a physician assistant, Respondent must notify the supervising physician of the terms and conditions of his/her probation.

6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules governing the practice of podiatric medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. PROBATION COMPLIANCE UNIT Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of podiatric medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California doctor of podiatric medicine's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office with the Board or its designee, upon request, at various intervals and either with or without

notice throughout the term of probation.

10. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions, with the exception of this condition, and the following terms and conditions of probation: Obey All Law; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California totals two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing podiatric medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11. FAILURE TO PRACTICE PODIATRIC MEDICINE - CALIFORNIA RESIDENT In the event the Respondent resides in the State of California and for any reason Respondent stops practicing podiatric medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California as defined in this condition will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time

exceeding thirty calendar days in which Respondent is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code section 2472.

12. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate will be fully restored.

13. VIOLATION OF PROBATION If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, the period of probation shall be extended until the matter is final, and no petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

14. COST RECOVERY Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, Respondent shall reimburse the Board the amount of $11,403.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve the Respondent of his/her obligation to reimburse the Board for its costs.

15. LICENSE SURRENDER Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of

Respondent's license. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice podiatric medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a podiatric medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

17. NOTICE TO EMPLOYEES Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which Respondent has been disciplined and the terms and conditions of probation to all employees involved in his/her practice. Within fifteen (15) days of the effective date of this Decision, Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and Decision in the case and understand Respondent's terms and conditions of probation.

18. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within thirty (30) days of such change.

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19. COMPLIANCE WITH REQUIRED CONTINUING MEDICAL EDUCATION Respondent shall submit satisfactory proof biennially to the Board of compliance with the requirement to complete fifty hours of approved continuing medical education, and meet continuing competence requirements for re-licensure during each two (2) year renewal period.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, C. Keith Greer, Esq. I understand the stipulation and the effect it will have on my Doctor of Podiatric Medicine License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Podiatric Medicine.

DATED: 12/11/16

JOHN E. EBAUGH, D.P.M.
Respondent

I have read and fully discussed with Respondent JOHN E. EBAUGH, D.P.M. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: Dec 9, 2016

C. KEITH GREER, ESQ.
Attorney for Respondent

[Endorsement on following page]

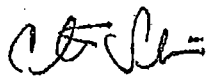
ENDORSEMENT

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

Dated: 12/13/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



CHRISTINA L. SEIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 500-2014-000082

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 10 2015
K. Young ANALYST

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

In the Matter of the Accusation Against: **JOHN E. EBAUGH, D.P.M.** **81-709 Dr. Carreon Blvd., Suite D3** **Indio, CA 92201** **Doctor of Podiatric Medicine License No. E 4495,** Respondent.	Case No. 500-2014-000082 ACCUSATION

Complainant alleges:

PARTIES

1. Jason S. Campbell, J.D. (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine (Board), Department of Consumer Affairs.

2. On or about June 5, 2003, the Board of Podiatric Medicine issued Doctor of Podiatric Medicine License Number E 4495 to John E. Ebaugh, D.P.M. (Respondent). The Doctor of Podiatric Medicine License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2017, unless renewed.

JURISDICTION

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

4. Section 2222 of the Code states:

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

5. Section 2497 of the Code states:

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

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

and shall assist and advise the board."

6. 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.

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

"(d) Incompetence.

"...."

7. Section 2266 of the Code states:

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

COST RECOVERY

8. Section 2497.5 of the Code states in pertinent part:

"(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.

Patient C.R.

9. On October 19, 2011, patient C.R., a 20-year-old male, first presented to Respondent with foot pain and hammertoes on the left foot. Respondent administered an injection to C.R. for the pain, however, the medical record does not indicate the location of the injection or include any detail regarding C.R.'s chief complaint other than painful ambulation.

10. On December 5, 2011, Respondent saw C.R. for a follow-up visit. On January 11, 2012, Respondent discussed with C.R. surgery of the second, third, and fourth digits/hammertoes of the left foot.

11. On January 31, 2012, Respondent performed a Keller bunionectomy and hammertoe corrections to the second, third, and fourth digits of C.R.'s left foot. Prior to being sedated for the surgery, Respondent applied a pneumatic ankle tourniquet to C.R.'s left lower extremity. The tourniquet remained on C.R. for a prolonged period of time – in excess of two hours.

12. On February 6, 2012, Respondent redressed the surgery site and scheduled C.R. for a follow-up appointment one week later. Respondent saw C.R. two days later, on February 8, 2012, and noted that C.R.'s foot felt cool to the touch. Respondent pulled out midway pins in the second, third, and fourth digits and prescribed Percocet. Two days later, on February 10, 2012, Respondent saw C.R. again and noted that he was experiencing a lot of pain in the hammertoe. On February 13, 2012, Respondent changed C.R.'s dressing, refilled the prescription for pain

medication, and instructed C.R. to follow up in one week. On February 17, 2012, Respondent examined C.R.'s foot noting edema, erythema and pus with dehiscence. C.R. continued to complain of a lot of pain. Respondent prescribed Augmentin. On February 20, 2012, C.R. complained of throbbing in the pinky toe. Respondent redressed the surgical site, moved the pins, and prescribed medication for the pain.

13. On February 22, 2012, Respondent treated C.R. noting wound dehiscence, erythema, edema, serosanguineous exudate, and post-operative avascular necrosis. Black is noted to be spreading and sharp debridement is performed. Respondent then referred C.R. to a vascular surgeon, H.L., M.D., who amputated the third and fourth digits of the left foot at the metatarsal head.

14. On or about June 9, 2015, Respondent was interviewed as part of the Board's investigation. During the interview, Respondent agreed that his documentation was less than the standard of care, that the tourniquet was left on too long, and that C.R. should have been sent to an emergency room or hospitalized at a sooner date.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

15. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he was grossly negligent in his care and treatment of patient C.R. The circumstances are as follows:

16. The standard of care requires a podiatrist to adequately document the patient's history and physical exam, preoperative planning, postoperative recovery, and plan to deal with complications.

17. The standard of care requires that a podiatrist have the surgical ability to perform surgery within safe guidelines with adequate allowed tourniquet time and adequate preoperative planning.

18. The standard of care requires that a podiatrist have the ability to identify postoperative complications in a timely manner and request consultation, and render adequate care.

19. Respondent's treatment of patient C.R., as set forth above in paragraphs 9 through 14, includes the following acts and/or omissions which constitute extreme departures from the standard of care:

A. Respondent failed to adequately document the chief complaint, radiographic interpretation, medical history, or possible risk factors throughout his care of C.R.

B. During Respondent's surgery on C.R., Respondent made an intraoperative decision to perform a Keller bunionectomy, however, there is no documentation about any complaint with the bunion site requiring surgical intervention or any planning for surgery in that regard.

C. The tourniquet time during Respondent's surgery on C.R. is well in departure of any standard of care or training.

D. Respondent treated initial signs of ischemic changes only by partially removing the pins and with antibiotics. Respondent made no mention of vascular insufficiency until February 22, 2012, when gross necrosis had set in. By that time, the window of opportunity to provide vascular intervention by removing the pins, hyperbaric oxygen, vasodilators, and vascular consultation was lost.

20. Respondent's acts and/or omissions as set forth in paragraphs 16 through 19, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

21. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he was negligent in his care and treatment of patient C.R. The circumstances are as follows:

22. Complainant refers to and, by this reference, incorporates paragraphs 9 through 14, above, as though set forth fully herein.

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

24. Respondent's acts and/or omissions as set forth in paragraphs 22 through 23, 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

(Incompetence)

25. Respondent's license is subject to disciplinary action under section 2234, subdivision (d), of the Code in that he displayed incompetence in his care and treatment of patient C.R. The circumstances are as follows:

26. Complainant refers to and, by this reference, incorporates paragraphs 9 through 14, above, as though set forth fully herein.

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

28. Respondent's acts and/or omissions as set forth in paragraphs 26 through 27, above, whether proven individually, jointly, or in any combination thereof, constitute incompetence, pursuant to section 2234, subdivision (d), of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

29. Respondent is subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate records of his care and treatment of patient C.R. The circumstances are as follows:

30. Complainant refers to and, by this reference, incorporates paragraphs 9 through 14, above, as though set forth fully herein.

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

32. Respondent's acts and/or omissions as set forth in paragraphs 30 through 31, above, whether proven individually, jointly, or in any combination thereof, constitute failure to maintain adequate and accurate records, pursuant to section 2266 of the Code. Therefore, cause for discipline exists.

PRAYER

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

1. Revoking or suspending Doctor of Podiatric Medicine License Number E 4495, issued to John E. Ebaugh, D.P.M.;

2. Ordering John E. Ebaugh, D.P.M. to pay the Board of Podiatric Medicine the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2497.5;

3. Ordering John E. Ebaugh, D.P.M. to pay the Board of Podiatric Medicine, if placed on probation, the costs of probation; and

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

DATED: November 10, 2015

JASON S. CAMPBELL, J.D.
Executive Officer
Board of Podiatric Medicine
Department of Consumer Affairs
State of California
Complainant

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Appendix A - Agreement to Monitor Practice and/or Billing

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
MEDICAL BOARD OF CALIFORNIA
BOARD OF PODIATRIC MEDICINE
2005 Evergreen Street, Suite 1300, Sacramento, CA 95815
P (916) 263-2647 F (916) 263-2661 WWW.BPM.CA.GOV

AGREEMENT TO MONITOR PRACTICE AND/OR BILLING

Introduction

The role of the practice and/or billing monitor (Monitor) is to ensure, to the extent possible, that the Probationer will conduct his/her practice with safety to the public and in a competent manner. The Monitor is responsible for reporting to the Board of Podiatric Medicine (Board) any identified problems or deficiencies in the quality of the Probationer's patient care, billing practices, medical record keeping, and/or professional conduct. The Monitor also fulfills the role of an educator and advisor to the Probationer, with the goal of assisting the Probationer to improve clinical skills and gain insight into practices that led to disciplinary action, so that learning and rehabilitation will occur. In order to provide this type of objective oversight, the Monitor must not have any prior or current business, personal, or other relationship with the Probationer that could reasonably be expected to compromise the ability of the Monitor to render fair and unbiased reports to the Board.

AGREEMENT

I, _____, D.P.M., "Monitor", hereby agree to monitor the medical and/or billing practice of _____, D.P.M., "Probationer."

•I have received and have read a copy of the Accusation and Decision regarding the Probationer.
•I clearly understand the role of a Monitor and what is expected of me.
•I have no prior or current business, personal or other relationship with the Probationer that could reasonably be expected to compromise my ability to render fair and unbiased reports to the Board.
•I understand that the Probationer is responsible for all costs associated with the monitoring of his/her practice, and that the Board does not set these costs. I am not being compensated for my services by any form of bartering arrangement with the Probationer.
•I have reviewed the Monitoring Plan and (check one):

Agree to monitor the Probationer as specified in the Plan.

I am submitting a revised Monitoring Plan for approval by the assigned Investigator. I understand that the Investigator may reject my proposed revisions, in which case I may either decline to monitor the Probationer's practice, or submit a new proposed Monitoring Plan that is acceptable to the assigned Investigator.

•I agree to regularly submit written reports to the assigned Investigator regarding my review of the Probationer's practice. The due dates and required content of these reports is detailed in the Monitoring Plan.
•If I am no longer able or willing to continue to monitor the Probationer's practice, I agree to immediately notify the assigned Investigator.

Executed on _____, 200_____, at

_____ _____, California.

(City) (County)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Monitor (Print Name) Signature

I have no prior or current business, personal or other relationship with (*Insert Monitor's name*) that could reasonably be expected to compromise the (*Insert Monitor's name*) ability to render fair and unbiased reports to the Board. I have agreed to compensate the monitor at the rate of $_____ per hour for all work performed in executing the duties of monitor.

Executed on _____, 200_____,

at _____ _____, California.

(City) (County)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____

Probationer (Print Name) Signature