DANIEL E. LUNGREN, Attorney General
of the State of California
GLORIA A. BARRIOS,
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 500
Los Angeles, California 90013
Telephone: (213) 897-2534

Attorneys for Complainant

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

In the Matter of the Accusation Against: EDWARD YAGOOBIAN, D.P.M., 23341 Golden Springs Drive Diamond Bar, Calif. 91765 Podiatric Certificate E-2172 Respondent.	NO. D-5594 A C C U S A T I O N

The Complainant alleges:

PARTIES

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

2. On or about July 1, 1977, Podiatric Certificate No. E-2172 was issued by the Board to Edward Yagoobian, D.P.M.,

/

/

/

hereinafter "respondent"), and at all times relevant to the charges brought herein, said license has been in full force and effect.

PRELIMINARY STATEMENT

The Board alleges respondent Edward Yagoobian, D.P.M., has violated the Medical Practice Act, section 2000 et seq. of the California Business and Professions Code. Respondent was under the influence of a controlled substance while practicing medicine. He has engaged in sexual misconduct with patients and committed gross negligence, repeated negligence and incompetence by the above alleged acts and by inappropriately prescribing drugs to patients, practicing medicine outside the scope of Podiatry, and performing foot surgery in a negligent/incompetent manner. Respondent has also been charged with misleading advertising. Finally, respondent has also been convicted of for weapons and drug violations.

JURISDICTION

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

4. Section 490 of the Code provides that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued, or the ground of knowingly making a false statement of fact required to be revealed in an application for such license. A conviction within

the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a Board is permitted to take following the establishment of a conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

5. Section 651 of the Code provides that it is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim, for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

/

(3) Is intended or is likely to create false or unjustified expectations of favorable results.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates any provision of this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of any provision of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

6. Section 725 of the Code provides that 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 for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

7. Section 726 of the Code provides that the commission of any act of sexual abuse, misconduct, or relations with a patient, client, customer which is substantially related to the qualifications, functions, or duties of the occupation for which the license was issued constitutes unprofessional conduct and ground for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (Commencing with Section 9000) of Division 3.

8. Section 2222 of the Code provides the California Board of Podiatric Medicine shall enforce and administer this article as to podiatry certificate holders. Any act of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed physicians and surgeons, the California Board of Podiatric Medicine also possesses that same authority as to licensed podiatrists.

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 podiatrist's certificate within its authority as granted by this chapter.

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.

9. Section 2234 of the Code 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.

10. Section 2238 of the Code provides that a violation of any federal statute or federal regulation of any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

11. Section 2239 of the Code provides for the use or prescribing for or administering to himself of any controlled substance; or use of any of the dangerous drugs specified in Section 4211, 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.

12. Section 2240 of the Code provides that for every licensee who, while in actual attendance on patients, is intoxicated to such an extent as to impair his ability to conduct the practice of medicine safety to the public and his patients, is guilty of unprofessional conduct.

13. Section 2261 of the Code provides that knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

14. Section 2262 of the Code provides that altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

15. Section 2271 of the Code provides that any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct.

16. Section 2497 of the Code provides that (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.

17. Section 2497.5 of the Code provides that the Board may request the administrative law judge, in 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. 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, except in those cases where financial hardship is shown.

18. Section 11377 (a) of the Health and Safety Code provides that it is unlawful to possess a controlled substance.

FIRST CAUSE OF ACTION

19. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 490 of the Code in that he was convicted of crimes substantially related to the qualifications, functions and duties of the licensee in question. The circumstances are as follows:

/

/

A. On or about September 22, 1993, respondent pleaded guilty to Penal Code section 12020 (a), a felony, for unlawfully carrying a concealed dagger upon his person; guilty to Penal Code section 12025 (a)(1), a misdemeanor, for carrying a concealed a semi-automatic pistol in a vehicle; guilty to Penal Code section 12031 (a), a misdemeanor, for carrying a concealed a loaded weapon on a public street; and guilty to Penal Code section 653 (k), a misdemeanor, for carrying a switch-blade knife, People v. Yagoobian, Superior Court of California, County of Los Angeles, Case No. KA017242.

B. On or about September 22, 1993, respondent received diversion for being charged with violating Health and Safety Code section 11377 (a), a felony, for possessing methamphetamine, a controlled substance, People v. Yagoobian, Superior Court of California, County of Los Angeles, Case No. KA017242.

C. Respondent was arrested for possessing illegal weapons and a controlled substance as he arrived at his medical office in Diamond Bar, California.

SECOND CAUSE OF ACTION

20. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under sections 651 and 2271 of the Code in that he made false, fraudulent, misleading and deceptive statements and claims to the public. The circumstances are as follows:

/

/

A. On or about September, 1992 through 1993, respondent advertised himself in the White Pages and Yellow Pages as "Chief of Staff" of his podiatry office located in Diamond Bar, California. He advertised the names of other associate podiatrists who ostensibly worked under respondent.

B. In fact, the three podiatrists that respondent lists as his associates are not his associates. Respondent is a solo practitioner. He does not work with any associates.

C. Respondent also advertised his phone number and office address under the name of another podiatrist in the White Pages and Yellow Pages without the permission of the podiatrist, thereby steering any potential patient from that podiatrist to respondent.

THIRD CAUSE OF ACTION

21. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 725 in that he excessively administered and excessively treated patients. The circumstances are as follows:

A. Patient K.E.

1. On or about April 6, 1987, respondent began to see K.E. as a patient.

2. Patient K.E. initially presented herself to respondent complaining of pain in her right foot. Respondent treated patient K.E. for her foot pain with injections of cortisone and xylocaine, physical therapy, and a prescription of Naprosyn. He took x-rays of both feet.

3. At the time patient K.E. began to be treated by respondent, she was taking medication for depression including but not limited to Lithium, Prozac, Ativan and Pepcid.

4. Respondent removed patient K.E. from psychopharmacological drugs in 1987.

5. On or about April 21, 1987, patient K.E. went to see respondent because she had injured her toe on her right foot.

6. Respondent took a x-ray of her right foot. He treated patient K.E. with ice and a splint.

7. On or about May 14, 1987, patient K.E. continued to have pain in her toe of the right foot. He took another x-ray of her right foot.

8. On or about August 22, 1988, patient K.E. returned to see respondent complaining about pain in her right foot. At the time, patient K.E. was suffering from depression and bipolar disorder.

9. Respondent treated patient K.E. for her foot pain with injections of cortisone, Marcaine, and xylocaine, physical therapy, ice, splints and a prescription of Naprosyn. Respondent took x-rays of patient K.E.'s feet.

10. On or about December 17, 1988, respondent performed surgery on patient K.E.'s right foot.

11. Respondent performed a bunionectomy on patient K.E.

12. On or about September 14, 1989, patient K.E. returned to see respondent complaining about a mass on her left foot.

13. Respondent treated patient K.E. for the mass on her left foot with injections of cortisone, Marcaine, and xylocaine, and physical therapy. He took a x-ray of her left foot. Respondent also diagnosed patient K.E. with hammertoes and tailor's bunion on her right foot.

14. In 1989, patient K.E. while being treated by respondent was taking medication for depression including but not limited to Lithium, Prozac and Ativan.

15. Respondent again removed patient K.E. from psychopharmacological drugs in 1989.

16. On or about December 29, 1989, respondent performed foot surgery on patient K.E.

17. On or about February 2, 1990, patient K.E. returned to see respondent about pain in her right foot.

18. Respondent treated patient K.E. for pain in her right foot with injections of cortisone, Marcaine, Novocaine, Wydase and physical therapy.

19. On or about September 10, 1990, respondent treated patient K.E. for pain in her left foot. He took another complete set of x-rays of her left foot.

/

20. In 1990, patient K.E. while being treated by respondent was taking medication for depression including but not limited to Lithium, Prozac and Ativan.

21. Respondent again removed patient K.E. from psychopharmacological drugs in 1990.

22. On or about October 30, 1990, respondent performed foot surgery on both of patient K.E.'s feet.

23. Patient K.E. returned to be treated by respondent in 1991.

24. In 1991, patient K.E. while being treated by respondent was taking medication for depression including but not limited to Buspar, Depakene, Naprosyn, and Parafon Forte.

25. Respondent again removed patient K.E. from psychopharmacological drugs in 1991.

26. Respondent gave patient samples of Halcion and prescribed Halcion twice to her.

27. On or about October 23, 1991, respondent performed foot surgery on patient K.E.'s feet.

28. On or about November 23, 1991, respondent performed foot surgery on patient K.E.'s feet for Tarsal tunnel syndrome.

29. On or about November 25, 1991, respondent gave patient K.E. samples of Vicodin.

30. Respondent did not keep adequate medical records on patient K.E.

31. Taking a patient off of psychopharmacological drugs is beyond the scope of a podiatrist.

32. Respondent failed to take a comprehensive podiatric history and physical examination on patient K.E.

33. Respondent failed to consult with patient K.E.'s medical doctor and psychiatric health care provider before he engaged in his course of treatment of her.

34. Respondent failed to first exhaust noninvasive use of podiatric measures before he injected medication and performed surgery on patient K.E.

35. Respondent's diagnosis of Tarsal tunnel syndrome was not supported by the record.

36. Respondent continually pushed patient K.E. toward unnecessary surgery.

37. Respondent failed to make and maintain clinical charts of the two operations he performed on patient K.E. in 1991.

38. Respondent failed to obtain proper informed consent from patient K.E. prior to surgeries.

B. Patient G.P.

1. On or about June 27, 1991, respondent began to see G.P. as a patient.

2. Patient G.P. initially presented herself to respondent complaining of an ingrown toenail and fungus in the right foot.

3. At the time patient G.P. began to be treated by respondent, she had a history of being a manic depressive and using heroin. She was taking Klonopin for her manic depressive disorder.

4. On or about June 27, 1991, respondent performed surgery on the right foot of patient G.P. for her ingrown toenail.

5. On or about July 3, 1991, through July 23, 1991, patient G.P. received post operative care from respondent.

6. On or about July 30, 1991, respondent treated patient G.P. for pain in her right foot.

7. Respondent treated her foot pain with therapy and injections. He referred patient G.P. to another physician for EMG studies.

8. Respondent noted that patient G.P. had a 20% relief after his treatment.

9. On or about August 28, 1991, respondent performed surgery on patient G.P. for Tarsal tunnel syndrome.

10. On or about September 3, 1991, through November 25, 1991, patient G.P. received post operative care from respondent.

11. Respondent treated patient G.P. with cortisone, Marcaine and xylocaine. Respondent took postoperative ankle x-rays.

/

12. Respondent did not keep adequate medical records on patient G.P. Respondent changed patient G.P.'s medical file to omit patient's drug history and pelvic examination he performed on her.

13. Respondent failed to take a comprehensive podiatric history and physical examination on patient G.P.

14. Respondent failed to consult with a medical doctor and psychiatric health care provider before he engaged in his course of treatment of her.

15. Respondent failed to first exhaust noninvasive use of podiatric measures before he injected medication and performed surgery on patient G.P.

16. Respondent's diagnosis of Tarsal tunnel syndrome was not supported by the record.

17. Respondent continually pushed patient G.P. toward unnecessary surgery.

18. Respondent failed to obtain proper informed consent from patient G.P. prior to surgery.

19. Respondent's taking of ankle x-rays of patient G.P. was not medically postoperatively necessary.

C. Patient S.M.

1. On or about June 2, 1992, patient S.M. working undercover for Complainant, went to see respondent complaining of arch pain in her left foot.

/

2. Respondent diagnosed patient S.M. as having Tarsal tunnel syndrome, heel spurs, hyperligamentous laxity, bursitis, a fracture and Raynaud's disease.

3. Respondent took x-rays of patient S.M.'s feet.

4. Respondent gave patient S.M. drug samples, 4 packages of Anaprox.

5. On or about June 11, 1992, patient S.M. working undercover for Complainant, returned to see respondent. He told patient S.M. she had a "band" located around her arch which was inflamed.

6. Respondent gave patient S.M. Lodine.

7. There was no medical reason for respondent to give medication to patient S.M.

8. Respondent's taking of an x-ray of patient S.M.'s right foot was not medically necessary.

9. Respondent's diagnosis of Tarsal tunnel syndrome and Raynaud's disease was not supported by the record.

10. Respondent allowed noncertified persons to administer physical therapy and to take x-rays.

FOURTH CAUSE OF ACTION

22. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 726 of the Code in that he committed sexual misconduct with a patient which is substantially

related to the qualifications, functions, or duties of a podiatrist. The circumstances are as follows:

A. On or about August 28, 1991, respondent performed a pelvic examination on patient G.P. There was no medical reason for the examination. Such an examination is beyond the scope of a podiatrist.

B. On or about October 20, 1991, respondent performed a pelvic and breast examination on patient and employee K.E. There was no medical reason for the examinations. Such examinations are beyond the scope of a podiatrist.

C. On or about October 27, through November, 1991, respondent began to test patient and employee K.E. for Cushings Disease. Respondent measured the breasts, waist, hips and thigh of patient K.E. No one was present during the taking of these measurements except respondent and patient K.E. The taking of measurements by respondent was done after hours or on weekends. The taking of these measurements and the testing for Cushings Disease is beyond the scope of a podiatrist.

D. From October, through November, 1991, respondent often asked patient K.E. inappropriate questions and made inappropriate remarks about the patient's sexual relationship with her boyfriend. Respondent asked patient K.E. what was the size of her boyfriend's "dick"? He asked her if her boyfriend satisfied her sexually? Respondent told patient K.E. that her boyfriend was "cheating" on her.

/

/

FIFTH CAUSE OF ACTION

23. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 2234 (b) of the Code in that he committed acts of gross negligence. The circumstances are as follows:

A. Complainant hereby incorporates by reference paragraphs 19, subdivisions A through C.

B. Complainant hereby incorporates by reference paragraphs 20, subdivisions A through C.

C. Complainant hereby incorporates by reference paragraphs 21, subdivisions A through C.

D. Complainant hereby incorporates by reference paragraph 22, subdivsions A through D.

E. From October through November, 1991, respondent snorted cocaine numerous times during office hours with patient K.E.

F. From October through November, 1991, respondent was under the influence of cocaine while he practiced medicine.

G. On or about November 22, through 23, 1991, respondent snorted several lines of cocaine.

H. On or about the early morning of November 23, 1991, respondent performed foot surgery on 3 patients at Doctors Hospital of West Covina, while under the influence of cocaine.

/

/

/

/

SIXTH CAUSE OF ACTION

24. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 2234 (c) of the Code in that he committed repeated acts of negligence. The circumstances are as follows:

A. Complainant hereby incorporates by reference paragraphs 19, subdivisions A through C.

B. Complainant hereby incorporates by reference paragraphs 20, subdivisions A through C.

C. Complainant hereby incorporates by reference paragraphs 21, subdivisions A through C.

D. Complainant hereby incorporates by reference paragraphs 22, subdivision A through D.

E. Complainant hereby incorporates by reference paragraph 23, subdivisions E through H.

SEVENTH CAUSE OF ACTION

25. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under section 2234 (c) of the Code in that he committed acts of incompetence. The circumstances are as follows:

A. Complainant hereby incorporates by reference paragraphs 21, subdivisions A through C.

EIGHTH CAUSE OF ACTION

26. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under sections 2239 and 2240 of the Code and section 11377 of the Health and Safety Code in that he used and possessed controlled substances while practicing medicine in a

manner that was dangerous to himself and members of the public and impaired his ability to practice medicine safely. The circumstances are as follows:

A. Complainant hereby incorporates by reference paragraphs 19, subdivision B through C.

B. Complainant hereby incorporates by reference paragraph 20, subdivisions E through H.

NINTH CAUSE OF ACTION

27. Respondent Edward Yagoobian, D.P.M., is subject to disciplinary action under sections 2261 and 2262 of the Code in that he knowingly made and signed false medical records and altered medical records with a fraudulent intent. The circumstances are as follows:

A. Complainant hereby incorporates by reference paragraphs 19, subdivisions A through C.

PRAYER

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

1. Revoking or suspending Podiatric Certificate E-2172 heretofore issued to respondent Edward Yagoobian, D.P.M.;

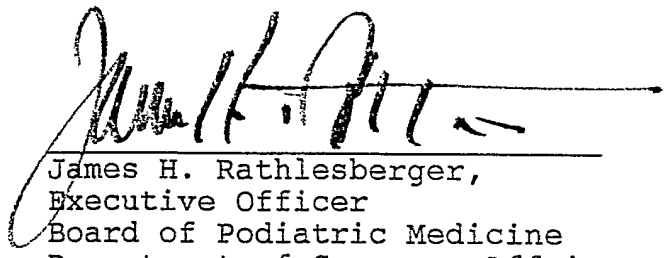
2. Pursuant to section 2262 of the Code, respondent be ordered to pay a civil penalty of five hundred dollars ($500.00) for violation of this section.

3. Imposing costs on respondent in accordance with Business and Professions Code section 2497.5; and

/

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

DATED: December 15, 1993.



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

Complainant