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# BEFORE THE BOARD OF PODIATRY EXAMINERS IN THE STATE OF ARIZONA

In the Matter of:

ALAN GAVECK, D.P.M.

SECOND AMDENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR DECREE OF CENSURE

Complaint No. 06-04-C

Holder of License No. 0424 For the Practice of Podiatry

In the State of Arizona,

Respondent.

The Arizona State Board of Podiatry Examiners ("the Board") considered this matter at its public meeting on April 11, 2007. Alan Gaveck, D.P.M. ("Respondent") and his counsel, Bruce Crawford, appeared before the Board for an informal interview pursuant to the authority vested in the Board by A.R.S. § 32-852.01. The Board voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

Respondent appealed the matter to Superior Court and on May 5, 2008, the Superior Court issued a minute entry order affirming the Board's decision in Case number LC2007-000539. Respondent further appealed the matter to the Arizona Court of Appeals. On September 1, 2009, The Court of Appeals issued a decision affirming the Board's decision in part and remanded the matter to the Board. The Arizona Supreme Court denied Respondent's Petition for Review. The matter came before the Board on April 14, 2010. The Board voted to issue Amended Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

On or about June 25, 2010, Respondent filed a Motion for Rehearing and/or Review of the Amended Decision. The matter came before the Board on July 14, 2010. The Board voted

to grant Respondent's Motion for Review and reviewed the Order. Upon review, the Board voted to amend the Order to remove the probationary period and continuing education requirements as is reflected in the Second Amended Order.

#### GENERAL FINDINGS

- The Board has jurisdiction over Licensee and the subject matter pursuant to A.R.S. §32-801 et. seq.
- 2. The Board has the authority to hold informal interviews pursuant to A.R.S. §32-852.01. After an informal interview, the Board may take action, including issuing a Decree of Censure, Probation, etc. A.R.S. §32-852.01.
  - 3. Licensee received sufficient and timely notice of the informal interview.

## FINDINGS OF FACT

- 4. The Arizona State Board of Podiatry Examiners ("Board") is that body public created and empowered pursuant to A.R.S. § 32-900 et seq. to administer the law of the State of Arizona relating to the practice of podiatry.
- 5. Dr. Gaveck is the holder of license number 0424 for practice podiatry in the State of Arizona.
  - 6. At all times relevant hereto, Dr. Gaveck was a licensed podiatrist.
- 7. On January 14, 2005, Dr. Gaveck (Respondent) performed a surgical procedure on patient DO to repair a dislocated second toe on the patient's right foot.
- 8. On Sunday January 16, 2005, DO telephoned Respondent complaining of severe pain. Respondent examined DO in her home on that date and found a bluish discolored engorged second toe. Respondent changed DO's surgical dressing.
- 9. Respondent again examined DO on January 17, 2005. Respondent recommended that a surgical procedure be performed to decompress the toe. Respondent performed an arthroplasty on the proximal phalanx of the second toe on DO's right foot on or about January 20, 2005. Respondent did not obtain written consent from DO for this surgical procedure.

- 10. Following the second surgery, DO continued to have pain, discoloration and blistering of the subject toe.
- 11. DO eventually sought out a second opinion regarding the toe and was examined by Dr. Jacoby, D.P.M. on January 24, 2005. Dr. Jacoby recommended a vascular evaluation at Scottsdale Memorial Hospital's Wound Care Center and an opinion on wound care options.
- 12. Respondent failed to recommend that DO obtain a vascular consultation or second opinion during his post operative care of the patient.
- 13. DO discontinued her care with Respondent and began treating with Dr. William Martin, M.D. Dr. Martin eventually performed an amputation of DO's second toe on February 15, 2005.

### CONCLUSIONS OF LAW

14. The conduct and circumstances in the Findings of Fact above constitute grounds for disciplinary action according to A.R.S. § 32-854.01(9) (failing to obtain written informed consent prior to a surgical procedure).

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

### IT IS HEREBY ORDERED:

- Respondent is issued a DECREE OF CENSURE.
- 2. This Order is conclusive evidence of the matters described and may be considered by the Board in determining an appropriate sanction in the event a subsequent violation occurs. In the event Respondent violates any term of this Order, the Board may, after opportunity for Informal Interview or Formal Hearing, take any other appropriate disciplinary action authorized by law, including suspension or revocation of Respondent's license.

# REHEARING/APPEAL RIGHTS

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Respondent is hereby notified that this Order is the final administrative decision of the Board and that the Respondent has exhausted his administrative remedies. Respondent is is decision e this decision

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5	advised that an appeal to superior court in Maricopa County may be taken from the
6	pursuant to Title 12, Chapter 7, article 6, within thirty-five (35) days from the date
7	is served.
8	DATED this, day of
9	ARIZONA STATE BOARD OF
10	PODIATRY EXAMINERS
11	Losgh Niccells m
12	Joseph Leonetti, D.P.M.
13	Board President
14	
15	Original of the foregoing filed
16	This Aday of July, 2010 with:
17	Arizona State Board of Podiatry Examiners 1400 W. Washington, Ste, 230
18	Phoenix, Arizona 85007
19	320 X 8 8 90
20	Copies of the foregoing mailed this day of, 2010 to:
21	
22	Bruce Crawford Crawford & Kline
23	1920 East Southern Avenue, Suite 101 Tempe, AZ 85282
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25	Keely Verstegen Attorney General's Office
26	1275 W. Washington Phoenix, AZ 85007
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