

1 **BEFORE THE ARIZONA STATE BOARD OF**
2 **PODIATRY EXAMINERS**

3 In the Matter of:) **CASE NO. 18-25-C**
4) **19-06-C**
5 **SETH N. CLARK, DPM**) **19-07-C**
6 Holder of License No. **POD-000838**)
7 For the Practice of Podiatry) **CONSENT AGREEMENT**
In the State of Arizona) **AND ORDER**
)

8 **CONSENT AGREEMENT**

9 **RECITALS**

10 In the interest of a prompt and judicious settlement of the above-captioned matter
11 before the Arizona State Board of Podiatry Examiners (“Board”), and in the interest of
12 protecting the people of the State of Arizona, consistent with the statutory requirements
13 and responsibilities of the Board pursuant to A.R.S. § 32-801, *et seq.* and A.R.S. § 41-
14 1092.07 (F)(5), Seth N. Clark, DPM (“Respondent”), holder of license number POD-
15 000838 to practice podiatry in the State of Arizona, and the Board enter into the following
16 Consent Agreement for Findings of Fact, Conclusions of Law, and Order for Probation and
17 Continuing Education (“Consent Agreement”) as the final disposition of this matter.

18 1. Respondent has the right to consult with an attorney prior to entering into
19 this Consent Agreement. Respondent has read and understands this Consent Agreement
20 as set forth herein, and has had the opportunity to discuss this Consent Agreement with
21 an attorney or has waived the opportunity. Respondent voluntarily enters into this
22 Consent Agreement for the purpose of avoiding the expense and uncertainty of an
23 administrative hearing.

24 2. Respondent understands that he has a right to a public administrative
25 hearing concerning each and every allegation set forth in the above-captioned matter, at
26 which time Respondent could present evidence and cross-examine witnesses. By entering
into this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to

1 such an administrative hearing, as well as all rights of rehearing, review, reconsideration,
2 appeal, judicial review, or any other administrative, and/or judicial action concerning the
3 matters set forth herein. Respondent affirmatively agrees that this Consent Agreement
4 shall be irrevocable and any modifications to this original document are ineffective and
5 void unless mutually approved by the parties in writing.

6 3. Respondent agrees that the Board may adopt this Consent Agreement or any
7 part of this agreement under A.R.S. §§ 32-852 and 32-852.01. Respondent understands
8 that the Board may consider this Consent Agreement or any part of it in any future
9 disciplinary action against him.

10 4. Respondent understands that this Consent Agreement does not constitute a
11 dismissal or resolution of other matters currently pending before the Board, *if any*, and
12 does not constitute any waiver, express or implied, of the Board's statutory authority or
13 jurisdiction regarding any other pending or future investigation, action, or proceeding.

14 5. All admissions Respondent makes in this Consent Agreement are made
15 solely for the final disposition of investigation number 18-25-C, 19-06-C, 19-07-C, and
16 any related administrative proceedings or civil litigation involving the Board and
17 Respondent. Respondent further understands that acceptance of the Consent Agreement
18 does not preclude any other agency, subdivision, or officer of this state from instituting
19 other civil or criminal proceedings with respect to the conduct that is the subject of this
20 Consent Agreement.

21 6. The Consent Agreement shall be subject to adoption by the Board and shall
22 be effective only when signed by the President of the Board or the Executive Director of
23 the Board, on behalf of the President. In the event that the Board does not adopt this
24 Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be
25 relied upon nor introduced in any action by any party. The parties agree that if the Board
26 rejects this Consent Agreement and this case proceeds to hearing, Respondent shall assert

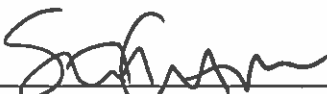
1 no claim that the Board was prejudiced by its review and discussion of this document or
2 any other records relating thereto.

3 7. Respondent understands that Probation constitutes a disciplinary action.
4 Respondent further understands that any disciplinary action taken against a licensee by
5 the Board must be reported to the National Practitioner Data Bank, in accordance with
6 federal regulations.

7 8. Respondent understands that this Consent Agreement is a public record that
8 may be publicly disseminated as a formal action of the Board.

9 9. Respondent understands that any violation of this Consent Agreement could
10 be grounds for further disciplinary action by the Board pursuant to A.R.S. § 32-854.01(21).

11
12 DATED: 1/1/2019

13 SIGNED: 
14 Dr. Seth N. Clark, DPM

15 **FINDINGS OF FACT**

16 1. The Arizona State Board of Podiatry Examiners is the duly constituted
17 agency for licensing and regulating the practice of podiatric medicine in the State of
18 Arizona and has jurisdiction over Respondent and the subject matter pursuant to A.R.S. §
19 32-801, *et seq.*

20 2. Seth N. Clark, DPM, is the holder of License Number POD-000838
21 which enables him to practice podiatry in the State of Arizona.

22 3. Respondent has been continuously licensed to practice podiatry in the State
23 of Arizona since June 8, 2016. Respondent's license to practice podiatry is effective until
24 August 31, 2019.

25 4. On May 1, 2018, the Board received a complaint from patient J.S. alleging
26 Respondent had performed surgery below the standard of care. J.S. underwent surgery on
March 22, 2017 for left modified Lapidus Bunionectomy, left inter-cuneiform fusion, left

1 deep peroneal nerve decompression, and left harvest of bone graft from calcaneus. The
2 Board found that Respondent's hardware placement during the initial surgery appeared to
3 be inadequate to achieve fusion and that Respondent's medical record documentation was
4 lacking. Respondent wrote prescriptions for Augmentin and Medrol without documenting
5 a clear reason, which is concerning when steroids are contraindicated in arthritic and
6 advanced osteoporotic patients. Respondent also provided substandard post-operative care
7 by ordering the patient to be partial weight bearing at the one week post-op visit with an
8 order to transition to full weight bearing in the boot over two weeks at the five week visit.
9 The Board found that ambulation of the patient too early with this patient's complicated
10 medical history prior to clinical evidence of healing verified by radiograph contributed to
11 the poor surgical outcome.

12 5. On September 24, 2018, the Board received a complaint from patient J.C.
13 alleging she had not been clearly informed about the surgical procedures she had consented
14 to and that she had been billed for services not rendered and had been charged excessive
15 fees. J.C. underwent surgery on February 1, 2018 for left Tailor's bunionectomy,
16 hammertoe repair, and other procedures as deemed necessary after being told by
17 Respondent that her 5th toe would return to its correct position once the bunion was
18 removed. J.C. alleged that she was not told she had a hammertoe, did not fully understand
19 what an implant arthroplasty was, was not told a mini-implant on the big toe would result
20 in immobility, and believed Respondent never removed the bunion. The Board found that
21 Respondent's communication and medical record documentation was lacking and that the
22 surgical codes appeared to be "unbundled," meaning that the procedures may have been
23 performed but had been billed independently even though the lesser procedures are
24 considered an inherent part of main surgical procedure, not separate and distinguishable.
25 Here, Respondent billed for a modified Hibbs procedure when the surgery performed was
26 to suture two extensor tendons to cut and release the hammertoe, which does not accurately
describe a Hibbs procedure. Respondent did not manage his patient's expectations

1 adequately and also documented patient was doing well post-operatively but wrote
2 prescriptions for methyl prednisone and Tramadol without documenting a clear reason.

3 6. On October 10, 2018, the Board received a complaint from patient L.D.
4 alleging Respondent had performed surgery below the standard of care and had performed
5 a surgery she had not consented to. L.D. underwent surgery on April 13, 2018 for right first
6 metatarsophalangeal joint implant arthroplasty, hammertoe repair, endoscopic tarsal tunnel
7 decompression and other procedures as deemed necessary. The Board found that the patient
8 had not been clearly informed about the surgical procedures she had consented to and that
9 medical documentation was lacking. The patient believed she had consented in office to
10 surgery on two toes and was surprised when the Respondent marked more than two toes
11 and post-operatively when she found that all five toes had been operated on. The Board
12 questioned the endoscopic tarsal tunnel decompression when the neurological exam
13 sensations were intact as tested. This diagnosis may have been appropriate but was not
14 supported by the documentation present in the medical record. The Board also questioned
15 the use of the Akin osteotomy on the first proximal phalanx when the implant would have
16 corrected the mild angular deformity present in Dr. Kerry Zang's radiographs. No pre-
17 operative radiographs were provided by Respondent, thus Dr. Zang's January 15, 2018
18 radiographs were the only ones that could be used in the Board's review. The operative
19 report also lacked documentation regarding the type and size of implant used. Respondent
20 did not manage his patient's expectations adequately when he assured her of a positive
21 outcome and provided substandard post-operative care by not seeing an arthritic patient
22 one week post-operatively, as most patients in this population will exhibit a negative event
23 within the first week after surgery, if they exhibit a negative event at all.

24 7. Substantive medical documentation was minimal with repeat of information
25 and review of systems by previous medical providers within the group with no
26 documentation regarding specific discussions with patient, only that discussions were
had. No original pre-operative radiographs or findings were present, as well as no Doppler

1 study reports. No reasons were given for medication prescriptions. Medical records are
2 not adequate unless they are complete and contain sufficient information to identify the
3 patient, support the diagnosis, describe the treatment, accurately document the results,
4 indicate advice and cautionary warning provided to the patient and provide sufficient
5 information for a similarly qualified practitioner to assume continuity of the patient's care
6 at any point in the course of treatment.

7 8. Consent forms were not diagrammed or written in a way a patient with little
8 to no medical training would understand, and the procedures were not explained clearly
9 to the patients prior to surgery. A pre-surgical consent form must provide sufficient
10 information from which a patient can make an informed decision as to the procedure.

11 9. Complete patient medical records were requested in each case via subpoena;
12 however, the Board had to make repeated requests for additional information on multiple
13 occasions. Specifically for radiographs, copies of electronic communication, operative
14 reports, financial records, explanations of benefits, prescriptions, progress notes, and
15 consent forms for each patient.

16 10. Respondent appeared before the Board on December 12, 2018 and admitted
17 to exercising poor judgment in the case of J.S. and engaging in inadequate recordkeeping.
18 Respondent also disclosed the complete loss of any pre-operative radiographs taken in
19 office prior to August 2018 due to a technical issue with an upgrade in the office's computer
20 system. Respondent stated he has changed the electronic medical records system in his
21 practice and will continue to improve documentation, as it was clearly lacking in these
22 cases.

23 CONCLUSIONS OF LAW

24 1. The conduct described in the Findings of Fact above, if proven true,
25 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
26 violates the provisions of A.R.S. § 32-854.01(3) which states, "Representing that a disease

1 or infirmity can be permanently cured, or that any disease, ailments, or infirmities can be
2 cured by secret method, procedure, treatment, medicine or devices, if this is not true.”

3 2. The conduct described in the Findings of Fact above, if proven true,
4 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
5 violates the provisions of A.R.S. § 32-854.01(9) which states, “Failing to obtain written
6 informed consent from a patient before the licensee performs any surgical procedure on the
7 patient.”

8 3. The conduct described in the Findings of Fact constitute grounds for
9 disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and violates the provisions
10 of A.R.S. § 32-854.01(11) which states, “Failing or refusing to maintain adequate records
11 on a patient for at least seven years or failing or refusing to make the records available to
12 a physician or another podiatrist within twenty-one days after request and receipt of proper
13 authorization.”

14 4. The conduct described in the Findings of Fact above, if proven true,
15 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
16 violates the provisions of A.R.S. § 32-854.01(17) which states, “Refusing to divulge to the
17 Board on demand the means, method, procedure, modality of treatment or medicine used
18 in the treatment of a disease, injury, ailment or infirmity.”

19 6. The conduct described in the Findings of Fact above, if proven true,
20 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
21 violates the provisions of A.R.S. § 32-854.01(20) which states, “Any conduct or practice
22 that is or might be harmful or dangerous to the health of the patient.”

23 7. The conduct described in the Findings of Fact above, if proven true,
24 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
25 violates the provisions of A.R.S. § 32-854.01(22) which states, “Violating or attempting to
26 violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to
violate any provision of this chapter.”

1 8. The conduct described in the Findings of Fact above, if proven true,
2 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
3 violates the provisions of A.R.S. § 32-854.01(23) which states, “Charging or collecting a
4 clearly excessive fee.”

5 9. The conduct described in the Findings of Fact above, if proven true,
6 constitutes grounds for disciplinary action pursuant to A.R.S. §§ 32-852 and 32-852.01 and
7 violates the provisions of A.R.S. § 32-854.01(25) which states, “Charging a fee for services
8 not rendered.”

9 **ORDER**

10 Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS**
11 **HEREBY ORDERED THAT** Seth N. Clark, DPM, holder of license number POD-
12 000838, shall be subject to the following:

13 1. **PROBATION.** Respondent shall be placed on Probation for the term of six
14 (6) months, during which time:

15 a. Respondent shall be required to provide the Board with a daily surgical
16 appointment schedule and a copy of the corresponding operative reports for
17 each patient on the schedule. The schedules and operative reports shall be
18 submitted to the Board by the 10th day of each month beginning February 10,
19 2019.

20 b. Respondent shall be subject to a random chart audit by the Board of no more
21 than ten (10) patient medical records selected from the daily surgical
22 appointment schedule submitted by Respondent each month. Complete patient
23 medical records must be submitted within ten (10) days of being requested by
24 the Board or the Board’s designee and must include ALL communications
25 related to a patient’s physical condition that are recorded in any form or medium
26 and that are maintained for purposes of patient diagnosis or treatment, including
medical records that are prepared by Respondent or by other providers. Patient

1 medical records must also include EOBs, superbills, patient billing records,
2 ancillary records, Medicare billing records, and records from third party
3 vendors who performed a service for the patient on Respondent's order or at
4 Respondent's request.

5 2. **CONTINUING EDUCATION.** Respondent shall take and complete at
6 least fifteen (15) total hours of Board approved CONTINUING MEDICAL
7 EDUCATION ("CME") in the areas of (1) billing and coding, (2) medical recordkeeping
8 and documentation, (3) surgical planning and patient selection, and (4) communication
9 and informed consent. Respondent shall complete a minimum of three (3) hours in each
10 area. Respondent shall complete the ordered CME hours within six (6) months from the
11 effective date of this Order. These CME hours cannot have been completed prior to the
12 date of this Order and shall be in addition to the twenty five (25) hours required by the
13 Board for license renewal.

14 Respondent bears all costs associated with complying with the terms of this
15 agreement. This Order becomes effective as of the date stated below.

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17
18 DATED THIS 2ND DAY OF JANUARY, 2019.
19 ARIZONA BOARD OF PODIATRY EXAMINERS

20
21 By: Barbara A. Campbell, DPM
22 Dr. Barbara Campbell, Board President

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24 Original Consent Agreement for Probation
filed this 2nd day of January, 2019 with the:

25 Arizona State Board of Podiatry Examiners
26 1740 West Adams Street, Suite 3004
Phoenix, Arizona 85007

1 Copy of the foregoing send by Electronic and
Regular mail this 2nd day of January, 2019 to:

2 Dr. Seth N. Clark, DPM
3 Arizona Arthritis and Rheumatology Associates
4 4550 E. Bell Rd., Bldg 8, Ste. 170
Phoenix, AZ 85032

5 ///

6 ///

7 Copy of the foregoing sent by electronic mail
this 2nd day of January, 2019 to:

8 Frankie Shinn-Eckberg, Assistant Attorney General
9 Office of Arizona Attorney General
10 1275 West Washington Street
Phoenix, AZ 85007

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12  A handwritten signature in black ink, appearing to read "K. C. G.", is written over a horizontal line. The signature is cursive and somewhat stylized.

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