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

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IN THE MATTER OF:

SETH CLARK, DPM,

Holder of License No. POD-000838

For the Practice of Podiatry

In the State of Arizona.

Case Nos.:

22-05-C and 23-01-C

**CONSENT AGREEMENT AND
ORDER FOR CONTINUING
EDUCATION**

(NON-DISCIPLINARY)

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In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Podiatry Examiners (“Board”) under A.R.S. § 32-801, *et. seq.* and A.R.S. § 41.1092.07 (F)(5), Dr. Seth Clark, DPM (“Respondent”), holder of license number 000838 in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final disposition of this matter.

RECITALS

1. Respondent neither admits nor denies the following Findings of Fact and Conclusions of Law. Respondent has agreed to enter into this Consent Agreement as an economical and practical means of resolving this case.

2. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney. Respondent and the Board voluntarily enter into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.

3. Respondent understands that he has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which time Respondent could present evidence and cross-examine witnesses. By entering

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

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

11 5. Notwithstanding any language in this Consent Agreement and Order, this Consent
12 Agreement and Order does not preclude in any way any other State agency or officer or political
13 subdivision of this state from instituting proceedings, investigating claims, or taking legal action
14 as may be appropriate now or in the future relating to this matter or other matters concerning
15 Respondent, including but not limited to, violations of Arizona's Consumer Fraud Act.
16 Respondent acknowledges that, other than with respect to the Board, this Consent Agreement
17 and Order makes no representations, implied or otherwise, about the views or intended actions
18 of any other state agency or officer or political subdivisions of the State relating to this matter or
19 other matters concerning Respondent.

20 6. Respondent understands that this Consent
21 Agreement does not constitute a dismissal or resolution of other matters currently pending
22 before the Board, *if any*, and does not constitute any waiver, express or implied, of the
23 Board's statutory authority or jurisdiction regarding any other pending or future
24 investigation, action, or proceeding.

25 7. All admissions Respondent makes in this Consent Agreement are made
26 solely for the final disposition of investigation number(s) 22-05-C and 23-01-C, and any
related administrative proceedings or civil litigation involving the Board and Respondent.
Nothing in this Consent Agreement is meant to constitute an admission by Respondent of

1 any inappropriate conduct or intended to be admissible in any action not involving
2 Respondent and the Board. Respondent understands that acceptance of the Consent
3 Agreement does not preclude any other agency, subdivision, or officer of this state from
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject
5 of this Consent Agreement.

6 8. The Consent Agreement shall be subject to adoption by the Board and shall
7 be effective only when signed by the President of the Board or the Executive Director of
8 the Board, on behalf of the President. In the event that the Board does not adopt this
9 Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be
10 relied upon nor introduced in any action by any party. The parties agree that if the Board
11 rejects this Consent Agreement and this case proceeds to hearing, Respondent shall assert
12 no claim that the Board was prejudiced by its review and discussion of this document or
13 any other records relating thereto.


14 9. If a court of competent jurisdiction rules that any part of this Consent
15 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
16 shall remain in full force and effect.

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

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


22 DATED: 10-30-2023 _____

SIGNED:



Dr. Seth Clark, DPM

24 APPROVED AS TO FORM:



Mandi Karvis, Esq.
Attorney for Respondent

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted agency for licensing and regulating the
3 practice of podiatry in the State of Arizona and has jurisdiction over Respondent as a
4 licensee of the Board and the subject matter pursuant to A.R.S. § 32-801, *et seq.*

5 2. Respondent is the holder of License Number POD-000838 which enables
6 him to practice podiatry in the State of Arizona.

7 **Complaint No. 2022-05-C**

8 1. On May 10, 2022, the Board received a complaint from GH, alleging that
9 Respondent committed multiple actionable violations of Board statute and rule. As a result
10 of the complaint, the Board opened an investigation.

11 2. On May 26, 2020, GH presented to Respondent with a chief of complaint of
12 pain to the 2nd toe. After evaluation she was diagnosed as having pain to the left 2nd
13 (Metatarsophalangeal Joint) MPJ. Between May of 2020 and April 22, 2021, Respondent
14 treated GH. Respondent proceeded with conservative care until December 17, 2020.

15 3. On December 17, 2020, GH presented to Respondent with a chief complaint
16 of continued and worsening pain across her left 1st MPJ and the entirety of the ball of her
17 foot. Respondent evaluated GH and determined that all conservative treatment had failed
18 and that she required surgical intervention. Respondent treatment planned for left great toe
19 joint fusion, harvest of bone graft from calcaneus, pan metatarsal head resection,
20 hammertoe repair on 2-5, and “other procedure deemed necessary.”

21 4. On January 7, 2021, GH presented for a pre-operative appointment where
22 she reviewed the treatment plan with Respondent and signed consents for surgery.

23 5. On January 27, 2021, Respondent performed the planned surgery without
24 complications.

25 6. After review of the investigation and discussion with the Respondent, the
26 Board found that Respondent’s treatment of GH did not fall below the standard of care.
However, the Board found that the Respondent’s record keeping did not comply with

1 minimum standards. The Board found the following record keeping deficiencies:

- 2 a. Failure to document procedures that were performed.
- 3 b. Several “cut and pasted” physical exams from previous visits.
- 4 c. Failure to notate the January 7, 2020, pathology collection in the patient record.
- 5 d. Failure to document rationale in the patient chart for repeat procedures.
- 6 e. Failure to document whether a total nail avulsion, a partial nail avulsion or a punch biopsy of the patient’s toe nail was performed.
- 7 f. Failure to document conversations with GH’s home therapist.
- 8 g. Failure to document whether the patient’s toe nail was infected.
- 9 h. On March 11, 2021, Respondent noted in the patient chart that the patient is following up for “L HWR and skin lengthening” but this was not the procedure that was performed.
- 10 i. Failure to document nerve density testing in the patient chart.

11 7. The Board determined that continuity of care could be diminished due to the
12 record keeping issues and that another health care provider could have issues attempting to
13 follow Respondent’s care of the patient.

14 **Complaint No. 2023-01-C**

15 1. On January 9, 2023, the Board received a complaint from DH, alleging that
16 Respondent committed multiple actionable violations of Board statute and rule while
17 treating her. As a result of the complaint, the Board opened an investigation.

18 2. On December 18, 2020, DH presented to Respondent with a chief complaint
19 of bilateral heel pain. Respondent evaluated DH and diagnosed her with plantar fasciitis,
20 tarsal tunnel syndrome and a calcaneal stress fracture.

21 3. Respondent treated DH for several chief complaints with conservative care
22 and surgery, from December 8, 2020 until June 30, 2022.

23 4. After review of the investigation and discussion with the Respondent, the
24 Board found that Respondent’s treatment of DH did not fall below the standard of care.
25 However, the Board found that the Respondent’s record keeping did not comply with
26 minimum standards. The Board found the following record keeping deficiencies:

- a. Failure to include specific details of ankle range of motion, specifically in regards to degree of equinus.

- b. Failure to document patient's foot type.
- c. Failure to perform or document a gait exam.
- d. Failure to document patient's stress fracture or bone marrow edema.
- e. Failure to consistently document location of amniotic injections.
- f. No documentation in notes regarding 6/16 and 6/30 appointments.

5. On October 11, 2023, at the Board's regular meeting, Respondent was present with his attorney, and discussed the results of the investigation with the Board. Respondent indicated during the discussion that he had signed up for a two-day PACE continuing education course in medical documentation to be held in January 2024, and that he had ceased performing major surgery. Respondent further agreed to provide the Board notice at least thirty (30) days before re-commencing his major surgery practice.

6. Based on the investigative record and the discussion with the Respondent, including the issues noted above, the Board found that the Respondent would benefit from Continuing Education in the area of medical documentation. Additionally, the Board determined that the PACE course would be sufficient to provide the Respondent with the

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-801 *et seq.*

2. The Board has the authority pursuant to A.R.S. § 41-1092.07(F)(5), to dispose of a matter by informal disposition, stipulation, agreed settlement, consent order or default.

ORDER

By mutual understanding and agreement between the aforementioned parties, **IT IS HEREBY ORDERED** that Respondent shall take and complete the PACE course (CME-Medical Record Keeping) which is scheduled for January 25-26, 2024.

IT IS FURTHER ORDERED that Respondent shall, within **six months** of the effective date of this Order, provide Board staff with proof of attendance in satisfaction of

1 this requirement. Proof shall include at a minimum, any results or findings by mentors
2 and/or reviewers of the program.

3 **IT IS FURTHER ORDERED** that Respondent agrees to notify the Board thirty
4 (30) days prior to re-commencing his major surgery practice.

5 1. The PACE course hours shall be in addition to the hours required for the
6 annual renewal of Respondent's podiatry license.

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8 2. Respondent's failure to timely comply with the Order will subject him to
9 future disciplinary action by the Board. A.R.S. § 32-854.01(21).

10 3. The effective date of the Order is the date it is signed by the Board President.

11 4. Respondent is solely responsible for any costs associated with complying
12 with this Order, including but not limited to the cost of the PACE course and travel
13 expenses.
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15 DATED THIS 1st DAY OF NOVEMBER, 2023,

16 ARIZONA BOARD OF PODIATRY EXAMINERS

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19 By: Barbara A. Campbell, D.P.M.
20 Barbara A. Campbell, D.P.M., Board President

21 Original of the foregoing was e-filed
22 this 1st day of November, 2023 with the:

23 Arizona State Board of Podiatry Examiners
24 1740 West Adams Street, Suite 3004
Phoenix, Arizona 85007

25 Copies of the foregoing sent by Electronic
26 mail this 1st day of November, 2023, to:

Dr. Seth Clark, DPM

1 Address of Record

Respondent

2 Copies of the foregoing sent by Electronic
3 Mail

4 this 1st day of November, 2023, to:

5 Mandi Karvis, Esq.

WICKER SMITH

6 One North Central Avenue, Ste. 885

7 Phoenix, AZ 85004

Attorney

8 Copy of the foregoing sent via Electronic mail

9 this 1st day of November, 2023, to:

10 Seamus Monaghan, Esq.

Assistant Attorney General

11 2005 N. Central Avenue, SGD/LES

Phoenix, Arizona 85004

12 *Attorney for the Board*

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