IN THE MATTER OF	*	**BEFORE THE MARYLAND**	
YENISEY YANES, D.P.M.	*	**STATE BOARD OF PODIATRIC**	
Respondent	*	**MEDICAL EXAMINERS**	
License Number: 01473	*	**Case Numbers:**	**2016-015**
			2016-028
	*		**2016-029**

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CONSENT ORDER

In or around late 2015, the Maryland State Board of Podiatric Medical Examiners (the "Board") opened an investigation of **YENISEY YANES, D.P.M.** (the "Respondent"), License Number 01473. Based on its investigation, the Board has determined that it has grounds to charge the Respondent with violating the Maryland Podiatry Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 16-101 *et seq.* (2014 Repl. Vol.).

The pertinent provisions of the Act provide:

> **Health Occ. § 16-311. Denials, reprimands, probations, suspensions, and revocations – Grounds.**
>
> (a) *In general.* – Subject to the hearing provisions of § 16-313 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or a limited license to any applicant, reprimand any licensee or holder of a limited license, impose an administrative monetary penalty not exceeding $50,000 on any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or a limited license if the applicant, licensee, or holder:
>
> (9) Promotes the sale to a patient of..., devices, appliances, or goods in a manner that exploits the patient for financial gain;

(16) Grossly overutilizes health care services; [and]

(17) Behaves unprofessionally in the practice of podiatry.

Prior to the Board issuing disciplinary charges, the Respondent agreed to enter this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. LICENSING BACKGROUND

1. At all times relevant, the Respondent was and is licensed to practice podiatry in the State of Maryland. The Respondent was originally licensed to practice podiatry in Maryland on April 24, 2009, under License Number 01473. The Respondent's license is current through December 31, 2021.

2. At all times relevant, the Respondent was a part owner/operator of Frederick Foot and Ankle ("FFA") located at 141 Thomas Johnson Drive, Suite 170, Frederick, Maryland 21702.

II. COMPLAINTS

3. On or about December 3, 2015, the Board received a complaint against the Respondent from a former employee ("Employee A"), who was a medical assistant at FFA for 18 months. Employee A alleged that while working as a medical assistant at FFA, she was often instructed by the Respondent to perform medical procedures such as administering cortisone injections and taking radiographs without supervision. Employee A further alleged that the Respondent routinely ordered Durable Medical Equipment ("DME") for patients based on insurance coverage and irrespective of the patient

complaints. After receiving the complaint, the Board opened an investigation of the Respondent under Case Number 2016-015.

4. On or about March 4, 2016, the Board received two more complaints against the Respondent. The first was from a podiatrist ("Podiatrist A")[1] licensed in Maryland and the second was from a former patient ("Patient A") of the Respondent who had sought a second opinion from Podiatrist A. Both complaints alleged over utilization of health care services and inappropriate care. After receiving these two additional complaints, the Board opened additional investigations of the Respondent under Case Number 2016-028 & -029, respectively.

III. BOARD INVESTIGATION

5. In the course of investigating the three complaints against the Respondent, the Board interviewed witnesses, solicited written responses from the Respondent and subpoenaed seven patient records from the Respondent. The Board submitted the seven patient records to a podiatrist (the "Board Expert") licensed in Maryland for a practice review. After reviewing the seven patient records, the Board Expert concluded that the Respondent: dispensed DME in a manner that exploited patients for financial gain; grossly overutilized heath care services; and behaved unprofessionally in the practice of podiatry.

[1] To ensure confidentiality and privacy, the names of individuals and facilities, other than the Respondent's, involved in this case are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals or entities in this document by contacting the administrative prosecutor.

IV. PATIENT-SPECIFIC SUMMARIES

Patient A

6. Patient A, a woman born in the 1960's, initially saw the Respondent on or about February 8, 2016, with an initial complaint of pain in her right foot.

7. After taking radiographs, the Respondent diagnosed Patient A with a nondisplaced fracture of the base of the 3rd metatarsal. Based on this diagnosis, the Respondent dispensed a surgical shoe, walking boot, and heel cups.

8. The Respondent's records for Patient A indicate that a dermatological examination was performed and that all nails were normal and showed no evidence of disease. The Respondent ordered a KOH staining to determine if the patient had fungal toenails. The Respondent billed for a nail biopsy using code 11755. The Board Expert determined that this billing was inappropriate because the doctor ordered a KOH stain, not the more involved and costly nail biopsy. The podiatric pathology report revealed that a keratogenous tissue measuring 1.1 x 0.3 x 0.1 cm was submitted for evaluation and non-specific nail bed keratinization was identified.

9. Patient A returned on or about February 22, 2016. On this visit, the Respondent took additional radiographs to evaluate the healing of the fracture, as well as an ultrasound. An MRI was also ordered since the patient was not progressing as well as expected and had a new pain to the dorsal of her foot. The MRI was performed in order to rule out a Lisfranc injury or other tendon pathology that was preventing her from healing.

Patient B

10. Patient B, a woman born in the 1940's, initially saw the Respondent on or about January 8, 2014. Patient B presented with pain in her right foot, arch and heel and sought replacements for an old pair of orthotics. The physical examination noted pain with palpation to the medial tubercle of the calcaneus and along the fascial band, right foot, bilateral fifth toes and laterally deviated hallux with dorsomedial eminence, bilateral.

11. A diagnostic ultrasound was performed on the first metatarsal phalangeal joint region and revealed inflammation of the first metatarsal phalangeal joint ("MPJ"). The records indicate that the Respondent performed a cortisone injection into the 1st MPJ under ultrasound guidance.

12. On her second visit, from January 30, 2014, the patient returned with the same history of present illness with symptoms of pain in her right foot and heel as well as pain complaints in the area of the first MPJ.

13. Patient B returned 14 months later, on March 26, 2015, with complaints of plantar fasciitis. This patient was mistakenly billed for a level III new patient office visit even though she was seen 14 months earlier. The Respondent's care included diagnostic ultrasound on her right heel for plantar fasciitis, radiographic examination, therapeutic ultrasound, cortisone injection that was ultrasound guided, and over-the-counter inserts were also dispensed.

14. Patient B returned three weeks later, on April 13, 2015, with continued pain to the right foot. Treatment included ultrasound therapy, strapping of her foot as well as

diagnostic ultrasound. The Board expert determined that the diagnostic ultrasound appeared to have a very similar report from previous patients. At this point an MRI was also ordered.

15. On May 4, 2015, Patient B reported continued pain. The MRI result was discussed with the patient. It revealed a calcaneal spur. Another diagnostic ultrasound was performed at this visit. The possibility of surgery was discussed.

16. On May 26, 2015, the Respondent prepared for surgery for resection of heel spur and plantar fascial release.

17. Surgery occurred on June 18, 2015.

18. On June 22, 2015, Patient B returned for her postoperative examination. A radiograph was performed with the interpretation of the radiograph reading a well-defined inferior calcaneal exostosis (spur). This was mistakenly the same radiographic report from her preoperative radiograph reading, which the Respondent explained by citing an EMR error.

19. On June 29, 2015, Patient B returned for her second postoperative visit. At this visit the Respondent dispensed a Cam Walker pneumatic boot.

20. On July 6, 2015, Patient B returned for her third postoperative visit, stating that she is having some loss of sensation on the plantar aspect of her arch. There was dehiscence noted over her surgical site. An alginate dressing was appropriately prepared.

21. On July 20, 2015, Patient B returned for her fourth postoperative visit and was given a collagen dressing and referred for physical therapy.

22. On August 3, 2015, Patient B returned stating that she is much improved. Another radiograph was taken at this time.

23. On September 15, 2015, the patient returned and received a nerve block. A diagnosis of tarsal tunnel and Morton's neuroma were added to the list of diagnoses.

24. On October 9, 2015, Patient B reported continued pain after her surgery as well as numbness on the top of her foot. The patient noted that the previous nerve block was helpful. Another nerve block with ultrasound guidance was performed. Although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

25. On December 7, 2015, Patient B stated that she was still having right foot pain. The pain level is described as a level 5. The Respondent billed for a diagnostic ultrasound as well as an injection under ultrasound guidance. Although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

26. On February 16, 2016, with continued pain being reported, an ankle brace was dispensed. Another injection was administered. An MRI was also ordered.

27. On March 3, 2016, Patient B reported continued pain. The MRI was discussed however there were no details made or noted in the chart. A copy of the report is included in the chart. The patient was appropriately referred to a neurologist and vascular specialist for follow-up as well as to physical therapy.

28. On April 25, 2016, this patient continued to have right foot pain. Another ankle brace was dispensed, and an injection under ultrasound guidance was performed on this visit.

Patient C

29. Patient C, a man born in the 1940's, presented on September 20, 2010, with a chief complaint of pain in his left arch and right Achilles tendon. The Respondent: diagnosed plantar fasciitis and Achilles tendonitis; dispensed an ankle gauntlet and night splint; and performed a cortisone injection. Ultrasound was also administered. The Board expert determined that dispensing of an ankle gauntlet is not typically indicated for treatment of Achilles tendinitis.

30. On October 4, 2010, Patient B returned. An MRI was ordered on this date with a diagnostic ultrasound. Patient C was casted for custom orthotics and another ankle gauntlet was dispensed. The MRI revealed a probable Achilles tendon tear.

31. Several more visits occurred over the next five years. On February 23, 2015, Patient C returned complaining of ankle pain. The Respondent offered injection of cortisone as well as new ankle gauntlets, along with recommended stretching exercises.

32. On November 25, 2015, Patient C returned requesting new orthotics that were previously helpful. The Respondent administered a cortisone injection with ultrasound guidance and obtained a radiograph. When the pain continued, Respondent ordered an MRI on January 11, 2016. The MRI revealed severe plantar fasciitis or partial rupture of plantar fascia, calcaneal spur and edema of the right ankle. By March 14, 2016, the patient's condition had improved.

Patient D

33. Patient D, a man born in the 1970's, initially presented to the Respondent on December 9, 2014, with a complaint of bilateral plantar fascia pain since a 2006 surgery not performed by the Respondent. The Respondent administered therapeutic ultrasound as well as diagnostic ultrasound, radiographs and arch strapping. In addition, an MRI was ordered. In the chart there is discussion of a lower lumbar MRI and also an MRI of both feet.

34. Patient D returned on December 23, 2014 and received bilateral ultrasound guided injections. However, although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

35. On January 12, 2015, Patient D received ultrasound therapy and two AFOs (night splints) for continued pain and was referred to physical therapy.

36. On February 23, 2015, another diagnostic ultrasound was performed.

37. On April 20, 2015, another diagnostic ultrasound was performed on each foot. Strapping was also performed on each arch and a level III office visit was appropriately charged.

38. On June 17, 2015, a new diagnosis of Achilles tendonitis was made and cortisone injections were given into each tendon.

Patient E

39. On September 23, 2014, Patient E, a man born in the 1940's, presented to the Respondent with a complaint of pain in both feet and ankles for years. It is noted in the chart under the chief complaint section that the patient has paresthesia to ankles, feet

and toes. The review of systems documented burning, numbness and tingling. The physical examination also documented decreased sensations in both feet. Patient E was a documented diabetic controlled with oral medication.

40. On September 23, 2014, a cortisone injection with ultrasound guidance was performed based on the patient's presenting symptoms of "pain in limb." Although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

41. A nail biopsy was billed when the notes state that the nails sample was sent out for a KOH.

42. The patient returned on October 7, 2014, stating that both heels as well as ankles were bothering him. A TENS unit was dispensed. An MRI was also ordered due to ongoing pain and revealed additional pathology.

43. On October 29, 2014, Patient E was billed for strapping and given diabetic shoes with custom orthotics.

44. On January 26, 2015, the Respondent dispensed braces and various components. The physical examination is the same with no new input for each visit. The patient was measured and casted for the braces on October 29, 2014 with a diagnosis of degenerative joint disease.

45. After receiving physical therapy, on April 23, 2015, Patient E presented with left leg pain from his buttocks to lateral left foot and severe pain in the left leg causing him to be unable to walk. He was given a cortisone injection, a Cam Walker, and

heel cups. An MRI was ordered for the lumbar spine and he was referred to a spine specialist.

Patient F

46. Patient F, a woman born in the 1940's, initially presented to the Respondent on November 16, 2010, with a complaint and diagnosis of an ingrown toenail. The ingrown toenail was treated appropriately with removal.

47. On the same visit, the Respondent also prescribed custom, functional orthotics.

48. Approximately 5 years later, on January 5, 2015, Patient F returned with complaints of left heel and foot pain. At that time, radiographs, diagnostic ultrasound, and ultrasound-guided injection of cortisone were performed. The ultrasound showed inflammation of the left proximal plantar fascia that measured 6.8 mm. Although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

49. On February 4, 2015, even though Patient F was only having unilateral left heel pain, bilateral air heels were dispensed.

Patient G

50. On November 10, 2014, Patient G, a woman born in the 1940's, presented to the Respondent with complaints of cramping in feet, calves, and bottom of feet. Bilateral radiographs were taken.

51. Ultrasound guided cortisone injection was performed. Although the Respondent provided a description of the needle placement in her record, no needle is visible in the ultrasound image.

52. There was no mention, on the radiograph report, about a previous bunionectomy with osteotomy causing shortening of the first Ray and possible overloading of the second MPJ. There was pain on palpation of the 1st and 2nd intermetatarsal space on the right which can indicate neuromas.

53. On November 26, 2014, Patient G returned for a second cortisone injection.

54. On January 13, 2015, Patient G returned for a third cortisone injection, this time, performed under ultrasound guidance with explanation included in the chart, but no needle is visible in the ultrasound image. On January 28, 2015, the patient reported improvement initially with injection. While less frequent, pain remained 7 out of 10.

55. An MRI was ordered to rule out any ligamentous issues. The Board's Expert determined that collectively, these diagnostic studies were excessive.

56. On February 11, 2015, a chemical cauterization was performed without evidence of a neuroma noted on the MRI report based on the Respondent's suspicion that an MRI can miss a section and miss pathology where a screw caused a metal artifact in the image. One week later the patient returned for her second alcohol injection.

57. On July 1, 2015, Patient G returned for her third alcohol injection and although billed, no needle is visible in the ultrasound image. A description of the needle placement was included in the record.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's conduct, as described above, constitutes violations of the Act as cited above, specifically:

- The Respondent's actions as described above constitute: promoting the sale to a patient of ... devices, appliances, or goods in a manner that exploits the patient for financial gain, in violation of Health Occ. § 16-311(a)(9); grossly overutilizing health care services, in violation of Health Occ. § 16-311(a)(16); and behaving unprofessionally in the practice of podiatry, in violation of Health Occ. § 16-311(a)(17).

ORDER

It is, on the affirmative vote of a majority of the Board, hereby:

ORDERED that the Respondent is placed on **PROBATION** for **ONE (1) YEAR.** The Respondent shall comply with the following terms and conditions:

A. Within two years of the date of the Consent Order, the Respondent shall make an anonymous donation in the amount of **$40,000 (FORTY-THOUSAND DOLLARS)** to the American Podiatric Medical Association (APMA) Foundation Scholarship Fund;

B. Within thirty (30) calendar days from the date of this Consent Order, the Respondent shall submit the name and professional credentials of a podiatrist licensed in Maryland for Board approval to serve as Supervisor for her practice of podiatry. The Supervisor shall not be associated with the Respondent through any current or past personal, collegial, professional or academic affiliation. The Respondent shall provide the Supervisor with a copy of this Consent Order, and any other document the Board deems relevant to her case. The Respondent understands and agrees that the Board may terminate any Supervisor and require that another Supervisor be designated. In the event that Board

requires another Supervisor be designated, the Respondent will have 30 days to submit the name and credentials to the Board.

C. The Respondent shall ensure that the Supervisor notifies the Board (in writing, within ten (10) days of the Board's approval) of his/her acceptance of the supervisory role.

D. The Supervisor shall meet with the Respondent in person at least once a month for a period of two years for random chart review and discussion. At these meetings, the Supervisor shall choose a random sample of podiatric charts of at least ten (10) active cases to review. The Supervisor shall review the charts to determine the Respondent's compliance with quality of care, appropriate utilization of health care services, and record keeping standards. In addition, the Supervisor shall discuss the cases with the Respondent to evaluate the Respondent's understanding of the conditions she is treating and her compliance with standards of care, appropriate utilization of health care services and record keeping standards.

E. The Supervisor shall submit quarterly written reports to the Board, which shall include but not be limited to the number and type of cases reviewed, podiatric issues discussed and his/her assessment of the Respondent's understanding of the conditions she is treating and her compliance with standards of care, appropriate utilization of health care services, and record keeping standards. The Board and the Respondent will use the agreed upon format to be used for the written reports submitted by the Supervisor.

F. The Respondent is solely responsible for ensuring that the Supervisor submits the required quarterly reports to the Board in a timely manner.

G. The Board has sole authority to implement any changes in the supervision and retains all authority to approve any changes in the supervision.

H. In the event that the Supervisor discontinues supervising the Respondent for any reason, the Respondent shall immediately notify the Board and submit a replacement candidate to serve as her Supervisor under the terms specified above, including that

the Respondent will submit the name of a new Supervisor within 30 days.

I. For a period of two years from the date of the Consent Order, the Board may, in its sole discretion, conduct random, chart reviews and billing audits. The chart reviews and billing audits must be for dates of service **after** the date of this Order;

J. Within sixty (60) days of the date of this Consent Order, the Respondent shall submit a course syllabus for in-person and/or online tutorial courses on the following topics: four (4) credit hours on podiatric billing practices and four (4) credit hours on professional ethics, for Board approval. Within six (6) months of the date of this Consent Order, the Respondent shall enroll in and successfully complete the Board-approved courses. The Respondent is solely responsible for promptly providing to the Board verification of her successful completion of the courses upon their completion. Credit received from these mandated courses under this provision may not be applied toward the continuing education requirements of license renewal; and

K. For a period of two years from the date of the Consent Order, the Respondent shall promptly notify the Board of any changes in employment or professional affiliations;

L. The Respondent shall provide a copy of this Consent Order to any of her employers and professional affiliations[2];

M. The Respondent shall comply with the Maryland Podiatry Act and all laws, statutes and regulations pertaining to the practice of podiatry in Maryland; and

AND IT IS FURTHER ORDERED that, after the conclusion of the **ONE (1) YEAR** probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Respondent may be required to

[2] In this order, "professional affiliations" means any employer, organization, association, or other entity that provides podiatric medical services where the Respondent serves in a professional capacity, whether paid or unpaid, such as entities where the Respondent holds hospital or ASC privileges.

appear before the Board or a committee of the Board to discuss her petition for termination. The Board shall grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints of similar violation; and it is further

ORDERED that if the Board determines, after notice and an opportunity for an evidentiary hearing before the Board that there is a genuine dispute as to a material fact, or a show cause hearing before the Board if there is no genuine dispute as to a material fact, that the Respondent has failed to comply with any terms or condition of probation or this Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, impose a civil monetary fine upon the Respondent, or suspend or revoke the Respondent's license to practice podiatry in Maryland; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board Chair; and is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

January 17, 2020
Date

Yvonne U. Umezurike, D.P.M.
Board President
Maryland State Board of Podiatric Medical Examiners

CONSENT

I, Yenisey Yanes, D.P.M., acknowledge that I had the opportunity to be represented by and consult with counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

01/16/2020
Date

Yenisey Yanes, D.P.M.
Respondent

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF FREDERICK

I HEREBY CERTIFY that on this 16 day of JANUARY _____, 2020, before me, a Notary Public of the foregoing State and City/County personally appeared Yenisey Yanes, D.P.M., and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.

Notary Public

My commission expires: DECEMBER 28, 2021