

ROME, CASE, KENNELLY AND KLEBANOFF, P. C. • ATTORNEYS AT LAW
693 BLOOMFIELD AVENUE • P. O. BOX 588 • BLOOMFIELD, CT 06002-0588 • (203) 242-7745 • JURIS NO. 50888

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Podiatry License
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Health

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Reid
11-17-88
JL

RETURN DATE: NOVEMBER 1, 1988

GARY FLEISCHMAN, D.P.M. : SUPERIOR COURT
V. : JUDICIAL DISTRICT OF
HARTFORD/NEW BRITAIN
AT HARTFORD

STATE OF CONNECTICUT, BOARD
OF EXAMINERS IN PODIATRY and
STATE OF CONNECTICUT,
DEPARTMENT OF HEALTH SERVICES : OCTOBER 6, 1988

APPEAL FROM DECISION OF STATE OF CONNECTICUT
BOARD OF EXAMINERS IN PODIATRY

To the Superior Court for the Judicial District of Hartford/New Britain at Hartford comes Gary Fleischman, D.P.M. of 26 Lafayette Street, Milford, Connecticut, appealing from a decision of the State of Connecticut, Board of Examiners in Podiatry and complains and says:

1. The plaintiff is a podiatrist licensed to engage in the practice of podiatry within the State of Connecticut pursuant to License Number 059.
2. The defendant, Board of Examiners in Podiatry (hereinafter the "Board") caused to be issued a Statement of Charges dated November 3, 1987 against the plaintiff.
3. Said Statement of Charges alleged in one count that the plaintiff had violated Connecticut General Statutes Section 20-59(4)

in that he failed to provide adequate podiatric treatment to a patient in one or more of the following ways:

- (a) He failed to keep accurate or adequate medical records;
- (b) he failed to adequately record the patient's post-surgery state;
- (c) he failed to adequately preserve articular cartilage during a joint reconstructive procedure;
- (d) He left large spikes of bone over a phalangeal joint;
- (e) He left large spikes of bone over a phalangeal joint causing traumatic arthritis;
- (f) He failed to avoid nerve entrapment;
- (g) He failed to perform an authorized sesamoidectomy;
- (h) He performed an unauthorized partial sesamoidectomy;
- (i) He failed to document adequate pre-operative care;
- (j) He failed to document adequate post-operative care; and
- (k) He failed to ensure sterile conditions prior to surgery.

4. A Notice of Hearing dated December 11, 1987 as to said charges was issued by the Board.

5. A hearing was scheduled for January 13, 1988 and continued on February 24, 1988, and concluded on March 30, 1988 with respect to the charges as aforesaid.

6. Thereafter, the Board caused to be issued a Memorandum of Decision dated September 9, 1988 in which the Board, inter alia, ordered that the plaintiff's license to practice podiatry in Connecticut be suspended for a period of thirty days and that the plaintiff pay a \$3,500.00 fine.

7. Said Memorandum of Decision was issued to the plaintiff by deposit of same in the mail addressed to the plaintiff on September 9, 1988.

8. The Memorandum of Decision and the Order as aforesaid of the Board was made upon unlawful procedure and in violation of constitutional or statutory provisions in that, (a) the Statement of Charges failed to adequately apprise the plaintiff of the facts or conduct warranting the Board's action against the plaintiff; (b) the Board deprived the plaintiff adequate opportunity for pretrial discovery in regard to the Department of Health Services (hereinafter the "DOHS") and the Board itself; (c) the Board failed to direct the DOHS to set forth a more definite and detailed statement sufficient to fairly apprise the plaintiff of the facts or conduct warranting its action against plaintiff; (d) the Board has not promulgated adequate standards by regulation pursuant to the Uniform Administrative Procedure Act (Chapter 54, C.G.S.) for the conduct allegedly

warranting the Board's actions against the plaintiff and/or to guide the Board itself in order that it may reach a fair and just decision; (e) the Board wrongfully rejected evidence and offers of proof helpful to plaintiff's defenses; (f) the Board rejected the plaintiff's requests to recuse the Board and for a jury trial; (g) the Board rejected the plaintiff's request to exclude the testimony of DOHS' expert witness based on the following:

- i) lack of expertise in the field in question;
- ii) extreme prejudice as shown on the record; and
- iii) conflict of interest which was shown to exist based on his being a member of the Board during the hearing;

(h) the Board found the plaintiff negligent in areas in which negligence had never been charged pursuant to the Board's complaint; and (i) the proceedings were otherwise not conducted fairly and impartially.

9. The administrative findings, inferences, conclusions and decisions of the Board are clearly erroneous in view of the reliable probative and substantial evidence on the whole record.

10. The decision to suspend the plaintiff's license for thirty days and to impose a fine of \$3,500.00 upon plaintiff is arbitrary and capricious and is otherwise characterized by abuse of discretion and

is a clearly unwarranted exercise of discretion pursuant to Section 19a-17 of the Connecticut General Statutes.

11. The findings of the Board as to the matters contained in the Statement of Charges do not, as a matter of law, constitute good cause for the Board's actions.

12. The Board was not properly constituted in that it had seated only one public member as opposed to two as required by law.

13. The Board lacked sufficient knowledge and expertise as to the surgical technique utilized by the plaintiff, subject of this proceeding, so as to be able to competently pass upon the issues raised in the Statement of Charges, and there is lacking on the record sufficient evidence of qualified experts upon which the Board could reasonably rely to support its findings with respect to the Statement of Charges.

14. The Decision and Order of the Board is otherwise effected by error of law.

15 The plaintiff is aggrieved by the aforesaid Order and Memorandum of Decision in that by virtue thereof, he is being denied his rights and privileges to engage in the practice of podiatry pursuant to his License Number 059.

WHEREFORE, the plaintiff appeals from the aforementioned Decision and Order of the State of Connecticut, Board of Examiners in Podiatry

and petitions this court to vacate and set aside the aforementioned Decision and Order and to grant such other and further relief as in law and equity may pertain. In addition, the plaintiff asks that the court enter a stay of the Board's decision and order subject of this appeal upon such terms and conditions as the court may deem appropriate in accordance with Section 4-183(c) of the Connecticut General Statutes.

PLAINTIFF, GARY FLEISCHMAN, D.P.M.

By Cathy A. Baldyga
Cathy A. Baldyga
Rome, Case, Kennelly and
Klebanoff, P.C.
His Attorneys

A TRUE COPY, ATTEST:
Isaac Homelson
ISAAC HOMELSON
DEPUTY SHERIFF
HARTFORD COUNTY

CITATION AND RECOGNIZANCE

TO ANY PROPER OFFICER:

By authority of the State of Connecticut, you are hereby commanded to summon the State of Connecticut, Board of Examiners in Podiatry and the State of Connecticut, Department of Health Services, to appear before the Superior Court in and for the Judicial District of Hartford/New Britain at Hartford on November 1, 1988, then and there to answer unto the foregoing appeal of Gary Fleischman, D.P.M. of Milford, Connecticut.

Gary Fleischman, D.P.M. of Milford, Connecticut, as principal, and John Pinney, Esquire of Bloomfield, Connecticut, as surety, are hereby recognized as jointly and severally bound unto the State of Connecticut, Board of Examiners in Podiatry, in the sum of \$250.00 conditioned that the plaintiff shall prosecute this appeal to effect and comply with and conform to the orders and decrees of the court in the premises.

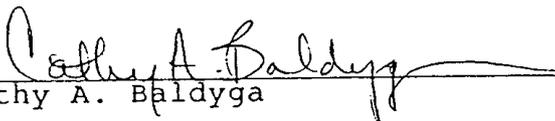
Hereof fail not, but due service make, in the same manner as required in case of a summons in a civil action and due return make.

ROME, CASE, KENNELLY AND KLEBANOFF, P. C. • ATTORNEYS AT LAW
693 BLOOMFIELD AVENUE • P. O. BOX 588 • BLOOMFIELD, CT 06002-0588 • (203) 242-7745 • JURIS NO. 50888

Dated at Bloomfield, Connecticut, this 6th day of October, 1988.


Cathy A. Baldyga
Commissioner of the Superior Court

Please enter the appearance of Rome, Case, Kennelly and Klebanoff, P.C., 693 Bloomfield Avenue, Bloomfield, Connecticut, Juris No. 50888, in the above-captioned case.


Cathy A. Baldyga

A TRUE COPY. ATTEST:

ISAAC HOMELSON
DEPUTY SHERIFF
HARTFORD COUNTY

10/11/88

Hearing Office
AUG 30 1988

NO. CV 86-0320200S : SUPERIOR COURT
GARY FLEISCHMAN, D.P.M. : JUDICIAL DISTRICT OD HARTFORD-
V. NEW BRITAIN AT HARTFORD
STATE OF CONNECTICUT, : AUGUST 23, 1988
BOARD OF EXAMINERS IN PODIATRY
AND STATE OF CONNECTICUT, DEPARTMENT
OF HEALTH SERVICES

MEMORANDUM OF DECISION

This is an appeal from a decision of the Connecticut Board of Examiners in Podiatry dated June 25, 1986, suspending appellant's license to practice podiatry in Connecticut for six months. On October 24, 1985, the appellee Connecticut Department of Health Services presented the appellee Board with a Statement of Charges alleging that appellant had violated Conn. Gen. Stat. Sec. 20-59 in that he: 1) negligently or incompetently performed foot surgery on a patient; 2) failed to provide the patient with adequate post-operative care; and 3) failed to keep adequate medical records concerning the patient.

A hearing was held by the appellee Board on December 11, 1985, which subsequently made findings of facts including the following:

3. On September, 1984, the Respondent performed a bunionectomy on a patient named Teresa Heifetz using a technique known as minimal incision surgery.

4. The bunionectomy performed by the

Supreme Court
Office
Aug 29 6 45 AM '88

Respondent on Ms. Heifetz on September 24, 1984, took place in the respondent's office in Milford, Connecticut. While the surgery took place, an individual who was not wearing sterile garb was present in the room where the procedure was performed.

5. During the course of the surgical procedure on Ms. Heifetz, the Respondent inserted into the patient's foot a needle which the Respondent had previously placed on an unsterile counter.

6. In performing the surgical procedure on Ms. Heifetz, the Respondent drilled into the first metatarsal phalangeal joint on the patient's right foot.

7. During the course of the surgical procedure on Ms. Heifetz, there was a shattering of the first metatarsal head on the patient's right foot.

8. As a part of his post-operative instructions to Ms. Heifetz, the Respondent directed the patient to apply gentian violet to the open wound site on a daily basis for the purpose of preventing infection.

9. As a part of his post-operative instructions to Ms. Heifetz, the Respondent directed the patient to soak her foot in a mixture of lukewarm water and white vinegar for the purposes of promoting healing and preventing infection.

10. Shortly after her September 24, 1984 surgery, Ms. Heifetz began to notice a greenish discharge from her open wound site. The Respondent, who was aware of this discharge, did not perform any test to determine whether the discharge was a bacterial infection.

11. The Respondent last saw Ms. Heifetz in his office on or about October 17, 1985. On October 25, 1985, Ms. Heifetz was admitted to Milford Hospital with possible osteomy-

elitis and a definite post-operative wound infection.

12. The Respondent's operative reports concerning the surgery performed on Ms. Heifetz on September 24, 1984, consisted of forms which were entirely pre-printed except for the name of the patient, the date of the procedure and the designation of the foot as either left or right.

13. The medical records concerning Ms. Heifetz maintained by the Respondent consisted largely of pre-printed forms and did not include a thorough medical history of the patient.

In its decision of June 25, 1986, the appellee Board concluded that appellant had violated Conn. Gen. Stat. Sec. 20-59 as alleged and suspended appellant's license to practice podiatry in Connecticut for a period of six months, effective August 1, 1986. The appellee Board noted in its order that it had given consideration to a prior decision, dated December 11, 1985, in which it ordered that a letter of reprimand be placed in appellant's file and that the reprimand be considered in connection with any further disciplinary proceedings involving appellant.

Appellant's appeal was timely served on July 19, 1986, and was timely filed on July 23, 1986. The order has been stayed pending the outcome of this appeal.

DISCUSSION

Judicial review of an agency decision is governed by the Uniform Administrative Procedure Act (UAPA), and the scope

of that review is restricted. Conn. Gen. Stat. Sec. 4-183(a). The determination of factual issues is a matter within the province of the agency, and if the Board of Examiners in Podiatry's findings are reasonably supported by the evidence in the record, the court must dismiss the appeal. Madow v. Muzio, 176 Conn. 374, 376 (1978); Lawrence v. Kozlowski, 171 Conn. 705, 708 (1976), cert. denied, 431 U.S. 969 (1977). "In appeals of this nature the court cannot substitute its discretion for that legally vested in the commission, but determines on the record whether there is a logical and rational basis for the decision of the commission or whether, in the light of the evidence, it has acted illegally or in abuse of its discretion." Lieb v. Board of Examiners for Nursing, 177 Conn. 78, 92 (1979).

Appellant's first claim of error is that in reviewing his conduct the Board of Examiners in Podiatry ("Board"), neglected to take account of any standard of care applicable to his specific school of practice in podiatry; The American Academy of Ambulatory Foot Surgery, the professional association of minimal incision surgeons. This encompasses appellant's argument that the Board failed to carry its purported burden of proof.

A determination of unprofessional conduct or incompetence made by a board which regulates health professionals is to be based on "those standards which are commonly accepted by

those practicing the same profession in the same territory, Altholtz v. Connecticut Dental Commission, 4 Conn. App. 307, 314-315 (1985). In reviewing such agency determinations, the courts of this state have long recognized that with the facts of the health professional's conduct before it, the regulatory agency is competent to determine whether or not such conduct was in accord with professional standards. Gibson v. Connecticut Medical Examining Board, 141 Conn. 218 (1954); Leib v. Board of Examiners for Nursing, supra; Altholtz v. Connecticut Dental Commission, supra. In Jaffe v. State Department of Health, 135 Conn. 339 (1949), the court expressly rejected the claim that since specific evidence as to standards of conduct had not been offered at the agency hearing, the defendant agency could not properly have concluded that a physician had rendered professional services in an incompetent manner:

Expert opinions of other physicians offered before it could have been disregarded by it, and from a practical standpoint would in all probability have had little, if any, effect in bringing it to a decision at variance with its own conclusion upon the question whether or not the conduct of a practitioner had been compatible with professional standards or whether or not he was competent. With the facts of that conduct before it, the board was competent to determine such questions without hearing expert opinion evidence.

135 Conn. at 349.

While the Board may be competent in its own right to determine whether the appellant's conduct was in derogation of professional standards, there is also, contrary to the appellant's claims, evidence in the record pertaining to standards of care for minimal incision surgery. Dr. John Wetherbee, a Connecticut podiatrist who has performed minimal incision surgery for approximately twenty-two years, testified as to the standards of care for the type of procedure performed by the appellant. Dr. Wetherbee further testified that the surgery performed by the appellant on Teresa Heifetz, as evidenced by Dr. Fleischman's post-operative x-ray, was not, in his opinion, in accord with the standard of care pertinent to minimal incision surgery.

On the basis of the evidence before it, it is clear that the Board acted well within its discretion in concluding that the appellant violated Conn. Gen. Stat. Sec. 20-59. In performing a bunionectomy, appellant drilled into the patient's joint and shattered a bone in her foot. The appellant also permitted a person in non-sterile garb to remain in the room where the surgical procedure took place, and inserted into the patient's foot a needle which had been placed on an unsterile counter. In addition to its own expertise, the Board had the benefit of Dr. Wetherbee's expert opinion on the surgery performed by the appellant.

Appellant has further claimed that the Board was biased against him, and that this bias was manifest in the Board's prevalent negative attitude towards minimal incision surgery. Appellant further alleges that the Board was improperly influenced by an advertisement taken out by plaintiff which was introduced into evidence.

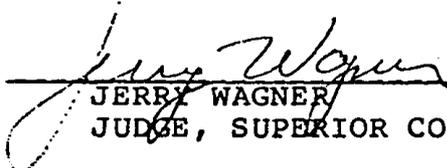
"[A] charge of bias must be supported by some evidence proving probability of bias before an official can be faulted for executing her duties." Obeda v. Board of Selectmen, 180 Conn. 521, 524 (1980). Conn. Gen. Stat. Sec. 4-183(g) recognizes that this court may reverse or modify an administrative agency's "decision if substantial rights of the appellant have been prejudiced." However, the fact that an advertisement of appellant's describing his services was admitted into evidence does not approach the establishment of a probability of bias, particularly since there is no hint of reliance on the admitted document by the Board in its decision.

Similarly, appellant's argument that the Board was biased against minimal incision surgery is not supported by evidence establishing the probability of such bias. While it is conceivable that a discipline with a small following such as minimal incision surgery might not be readily accepted, there is no basis in the record establishing a true bias here. The Board's providing for expert testimony from a practitioner of

minimal surgery, Dr. John Wetherbee, clearly indicates its effort to be objective.

With regard to the length of the Board's order of suspension, upon review, the court cannot say that this was an exercise of authority beyond the realm of reasonable discretion. Hospital of St. Raphael v. Commissioner on Hospitals and Health Care, 182 Conn. 314, 318 (1980).

The appeal is DISMISSED.


JERRY WAGNER
JUDGE, SUPERIOR COURT

CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

In re: Gary Fleischman, D.P.M.
License No. 059

NOTICE TO COMPLY

The Decision regarding Gary Fleischman, D.P.M., by the Board of Examiners in Podiatry, dated June 25, 1986, was stayed until the determination of the appeal by the Superior Court. The appeal was decided on August 23, 1988, and the Board hereby gives Notice to Gary Fleischman that its decision of June 25, 1986, becomes effective on September 23, 1988. That decision dated June 25, 1986, ordered that Respondent's license to practice podiatry in the State of Connecticut be suspended for a period of six (6) months.

CONNECTICUT BOARD OF EXAMINERS
IN PODIATRY



David Unger, D.P.M.
Chairman

Date of mailing of this
decision to the Respondent

September 9, 1988

Wiz B. Carroll

Celia B. Carroll, Liaison
to the Connecticut Board of Examiners in Podiatry

STATE OF CONNECTICUT
BOARD OF EXAMINERS IN PODIATRY

In Re: Gary Fleischman, D.P.M.
License No. 059

MEMORANDUM OF DECISION

The Department of Health Services presented the Connecticut Board of Examiners in Podiatry (Board) with a Statement of Charges, dated October 24, 1985, brought against Gary Fleischman, D.P.M., the Respondent. The statement of charges alleged in three counts that the Respondent had violated Conn. Gen. Stat. § 20-59 in that he: (1) performed foot surgery on a patient in a negligent or incompetent fashion; (2) failed to provide the patient with adequate post-operative care; (3) failed to keep adequate or accurate medical records concerning the patient.

A Notice of Hearing dated November 25, 1985 was issued to the Respondent by the Board. The Department's Statement of Charges was attached to the Notice. The hearing was held by the Board on December 11, 1985. The Respondent was represented by counsel and had full opportunity to present evidence and cross-examine witnesses.

Facts

1. Respondent, Gary Fleischman, D.P.M., was at all pertinent times licensed to practice podiatry by the State of Connecticut Department of Health Services.
2. Pursuant to Conn. Gen. Stat. § 4-182 (c), Respondent was provided full opportunity prior to the institution of agency action to show compliance with all lawful requirements for the retention of his license.
3. On September 24, 1984, the Respondent performed a bunionectomy on a patient named Teresa Heifetz using a technique known as minimal incision surgery.
4. The bunionectomy performed by the Respondent on Ms. Heifetz on September 24, 1984 took place in the Respondent's office in Milford, Connecticut. While the surgery took place, an individual who was not wearing sterile garb was present in the room where the procedure was performed.
5. During the course of the surgical procedure on Ms. Heifetz, the Respondent inserted into the patient's foot a needle which the Respondent had previously placed on an unsterile counter.
6. In performing the surgical procedure on Ms. Heifetz, the Respondent drilled into the first metatarsal phalangeal joint on the patient's right foot.

7. During the course of the surgical procedure on Ms. Heifetz, there was a shattering of the first metatarsal head on the patient's right foot.

8. As a part of his post-operative instructions to Ms. Heifetz, the Respondent directed the patient to apply gentian violet to the open wound site on a daily basis for the purpose of preventing infection.

9. As a part of his post-operative instructions to Ms. Heifetz, the Respondent directed the patient to soak her foot in a mixture of lukewarm water and white vinegar for the purposes of promoting healing and preventing infection.

10. Shortly after her September 24, 1984 surgery, Ms. Heifetz began to notice a greenish discharge from her open wound site. The Respondent, who was aware of this discharge, did not perform any test to determine whether the discharge was a bacterial infection.

11. The Respondent last saw Ms. Heifetz in his office on or about October 17, 1985. On October 25, 1985, Ms. Heifetz was admitted to Milford Hospital with possible osteomyelitis and a definite post-operative wound infection.

12. The Respondent's operative reports concerning the surgery performed on Ms. Heifetz on September 24, 1984 consisted

of forms which were entirely pre-printed except for the name of the patient, the date of the procedure and the designation of the foot as either left or right.

13. The medical records concerning Ms. Heifetz maintained by the Respondent consisted largely of pre-printed forms and did not include a thorough medical history of the patient.

DISCUSSION AND CONCLUSIONS

First Count

The Respondent is charged with performing foot surgery in a negligent or incompetent fashion in violation of Conn. Gen. Stat. § 20-59. On the basis of the facts it has found, the Board concludes that the Respondent has violated § 20-59 as specified in the first count.

The presence in the room where the surgical procedure took place of a person in non-sterile garb, and the insertion into the patient's foot of a needle which had been placed on an unsterile counter are unacceptable in terms of maintaining a sterile operating environment. With respect to the actual performance of surgery on the patient, drilling into the first metatarsal phalangeal joint in the patient's toe is an improper technique in this type of minimal incision surgery. The

shattering of the first metatarsal head which occurred during the procedure is not an expected result of the surgery and resulted from the improper surgical technique used in this case.

Second Count

The Respondent is charged with failing to provide Ms. Heifetz with adequate post-operative care in violation of Conn. Gen. Stat. § 20-59. On the basis of the facts it has found, the Board concludes that the Respondent has violated § 20-59 as specified in the second count.

The post-operative instructions given to Ms. Heifetz by the Respondent directed her to soak her foot in a water and white vinegar solution in order to promote healing and prevent infection. The Board notes that a water and white vinegar solution is not anti-infective. Ms. Heifetz was also directed to apply gentian violet on a daily basis to the open wound site. The Board notes further that the use of gentian violet in this manner is not anti-infective and is an outdated technique.

Shortly after her September 24, 1984 surgery, Ms. Heifetz began to notice a greenish discharge from her open wound. A greenish discharge is indicative of a possible infection. This discharge was brought to the attention of the Respondent by the patient. With regard to the discharge, the Respondent testified

that "I saw no indication of an abnormal or pathological exudate or any signs of infection under my care." While the Respondent claims that he did not see any infection, he should, as a matter of prudent post-operative care and treatment, have determined through testing whether or not the discharge was a bacterial infection. Ms. Heifetz was admitted to Milford Hospital with a definite post-operative wound infection approximately one week after her last visit to the Respondent. It is the conclusion of the Board that the Respondent's post-operative instructions and care with respect to infection prevention were not adequate in this case.

Third Count

The Respondent is charged with failing to keep adequate or accurate medical records concerning Ms. Heifetz in violation of Conn. Gen. Stat. § 20-59 . On the basis of the facts it has found, the Board concludes that the Respondent has violated § 20-59 as specified in the third count.

The Respondent's "operative reports" concerning the surgery he performed on Ms. Heifetz on September 24, 1984 were in fact pre-printed forms which described a designated procedure, e.g. arthroplasty of the first metatarsal phalangeal joint, and contained blank spaces to be filled in with the patient's name,

the date of the procedure and identification of the affected foot as the left or right foot. These "reports", while describing a particular type of surgical procedure in detail, were not prepared on the basis of the specific surgery performed on Ms. Heifetz.

Although the Respondent suggested that the pre-printed operative reports detailed everything he did with respect to Ms. Heifetz's surgery, he acknowledged at the hearing that the forms did not contain certain information concerning the specifics of Ms. Heifetz's surgery, e.g. the type and amount of anesthetic administered during surgery. The Board further notes that the operative reports, in addition to being pre-printed forms, were not actually signed by the Respondent, but were rubber stamped with the Respondent's signature by his nurse. There is no indication that the Respondent ever prepared or reviewed a report which accurately and adequately detailed the specific surgery performed on Ms. Heifetz.

Apart from the operative reports, the medical records concerning Ms. Heifetz maintained by the Respondent consisted largely of pre-printed forms. The Respondent's records did not include a thorough medical history of the patient. In general, the medical records lacked specificity as to the particular

patient, and the Board concludes that the Respondent failed to keep adequate or accurate medical records concerning Ms. Heifetz

ORDER

Pursuant to its authority under Conn. Gen. Stat § 19a-17, the Board of Examiners in Podiatry hereby orders that:

The license of the Respondent, Gary Fleischman, to practice podiatry in Connecticut be suspended for a period of six months, effective August 1, 1986, 1986.

In determining an appropriate order in this case, the Board has given consideration to its decision dated December 11, 1985 in which the Board ordered that a letter of reprimand be placed in Respondent's file and that such reprimand be considered in connection with any further disciplinary hearings before the Board concerning the Respondent.

Connecticut Board of
Examiners in Podiatry

BY: James Kice, DPM
David J. Meyer, DPM

JUNE 25, 1986

Date



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

DATE: 16 May 1990
TO: David J. Pavis, Chief, PHHO
FROM: Ellen M. Shanley, Staff Attorney, PHHO *ESM*
RE: Gary Fleischman, D.P.M. - Chronology and Status Report

As of 5/3/90, this office has had seventeen (17) cases opened against Gary Fleischman's podiatric license.

The first case was filed in October 1983 by D.M.Q.A., went to hearing in May 1985, and Memorandum of Decision was issued in December 1985. The hearing centered around his use of acupuncture as the modality of treatment. He was issued a reprimand.

The second case was filed by a surgical patient (Heifetz) in May 1985, and the June 1986 Memorandum of Decision suspended his license for 6 months.

The third case was filed by a surgical patient (Rudolph) in December 1985, hearing was in November 1986, and the July 1987 Memorandum of Decision suspended his license for 18 months, with a \$5000.00 fine.

The fourth case was filed by a surgical patient (Lally) in December 1986, hearing was in December 1987, and the Memorandum of Decision in September 1988 suspended his license for 30 days, with a \$3500.00 fine.

The next case was filed by a surgical patient (Dunn) in June 1989, Summary Suspension was in July 1989, Hearing and Memorandum of Decision was in September 1989. Summary suspension was utilized due to the unauthorized practice of minimal surgery during the Superior Court's ban of his use of M/I surgery.

The next case was filed by a surgical patient (Spoerndle) in July 1988, hearing was held in November 1989, and a Memorandum of Decision is pending.

The next case involves Medical Records, was filed in January 1988 (by Polocko), Statement of Charges was signed in August 1989, and hearing is set for 16 May 1990.

The eighth case was filed by a surgical patient in October 1988, Statement of Charges was signed in February 1990 and has not yet been scheduled.

Nine more cases are waiting for hearing/in investigation.

The respondent has the Memorandum of Decision's from the 2nd, 3rd, and 4th cases on appeal. The court heard his argument in 1989, and has not yet rendered a decision.

Also attached is a 12 January 1989 memo on his licensure status.

EMS:pf
5289Q/10

Attachment

Phone:
150 Washington Street — Hartford, Connecticut 06106
An Equal Opportunity Employer