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1986-1202-019-009

CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

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

MEMORANDUM OF DECISION

The Connecticut Board of Examiners in Podiatry was presented with a Statement of Charges by the Department of Health Services, dated November 3, 1987, brought against Gary Fleischman, D.P.M. (Respondent). The Statement of Charges alleged, in one count, violations of Conn. Gen. Stat. § 20-59(4)

A Notice of hearing, dated December 11, 1987, was issued to Respondent. Attached to the Notice was a copy of the Department's Statement of Charges. A hearing was scheduled for January 13, 1988. The hearing continued on February 24, 1988, and concluded on March 30, 1988. Attorneys for the Respondent were Alan M. Kosloff, Esq. and David K. Jaffe, Esq. At all times Respondent had the opportunity to present evidence and cross-examine witnesses.

Prior to the initiation of the instant charges, the Respondent was given the opportunity to show compliance with all lawful requirements for the retention of his license pursuant to Conn. Gen. Stat. § 4-182(c).

FINDINGS OF FACT

1. Respondent Gary Fleischman, D.P.M., is the holder of Connecticut Podiatry License Number 059, and he held that license at all times referenced in the complaint.

2. In January and February of 1986 Gary Fleischman undertook podiatric treatment of patient Helen Lally. On January 13, 1986 he operated on her right foot, and on January 27, 1986 he operated on her left foot.

3. Patient Helen Lally was nauseated and very dizzy following her surgery on January 27, 1986. This condition was not recorded in the patient's medical record.

4. Before performing minimal incision surgery on Helen Lally on January 13, 1986 and January 27, 1986, Respondent failed to take an axial view x-ray of her foot.

5. Respondent cannot see the sesamoid bone while performing minimal incision surgery, and an axial view x-ray is necessary to see the bones contour, and as guidance in properly performing the surgery.

6. Respondent permitted an office assistant to stamp his name on operative reports for surgery performed on Helen Lally on January 13, 1986 and January 27, 1986.

7. Respondent failed to perform an authorized sesamoidectomy on patient Helen Lally for surgery performed on January 13, 1986 and January 27, 1986.

8. Respondent performed an unauthorized partial sesamoidectomy on patient Helen Lally for surgery performed on January 13, 1986 and January 27, 1986.

9. Respondent's operating room was staffed by personnel dressed in street clothes. Gloves, masks, caps and gowns were not worn by assistants while in the operating room on January 13, 1986 and January 27, 1986.

10. On January 13, 1986 Respondent performed surgery on one of Helen Lally's feet without first taking the street sho off her other foot.

Discussion and Conclusions

It is the opinion of the Board that Sections 3(c), 3(d), 3(e) and 3(f) of the Statement of Charges should be dismissed. The Board finds insufficient evidence to show that Respondent failed to adequately preserve articular cartilage during a joint reconstructive procedure; that he left large spikes of bone over a phalangeal joint; or that he failed to avoid nerve entrapment.

Respondent was charged with having violated Conn. Gen. Stat. § 20-59(4). That statute states, in pertinent part:

> The board may take any of the actions set forth in section 19a-17 for any of the following reasons: ...(4) illegal or incompetent or negligent conduct in the practice of podiatry...

In January and February of 1986 Responent undertook podiatric treatment of patient Helen Lally. On January 13, 1986 he operated on her right foot, and on January 27, 1986 he operated on her left foot. The Board finds that the Respondent violated Conn. Gen. Stat. § 20-59(4) in his failure to provide adequate podiatric care to Helen Lally on these two occasions.

Following her surgery on January 27, 1986 Helen Lally was nauseated and very dizzy. Respondent failed to record this in the patient's medical record. These complications should have been noted in the patient's record, and Respondent was negligent in his failure to do so. This negligence violates Conn. Gen. Stat. § 20-59(4), as alleged in Sections 3(a), 3(b) and 3(j) of the Statement of Charges.

Before performing surgery on Helen Lally, Respondent failed to take an axial view x-ray of the foot. To see what he was going to do during minimal incision surgery, Respondent needed an axial view x-ray to look at the contour of the sesamoi

bone. Respondent's failure to take an axial view x-ray was negligent. This negligence violates Conn. Gen. Stat. § 20-59(4) as alleged in Section 3(i) of the Statement of Charges.

Respondent did not indicate on the patient's record wh he only performed a partial sesamoidectomy and not the authoriz sesamoidectomy. A sesamoidectomy is a total removal of the sesamoid bone, and a partial sesamoidectomy is the removal of a portion of the bone. In addition to this, Respondent permitted office assistant to stamp his name on operative reports. The report should have been signed by the Respondent. Respondent w negligent in his failure to perform an authorized sesamoidectom and by allowing his signature to be stamped on operative report This negligence violates Conn. Gen. Stat. § 20-59(4), as allege in sections 3(a), 3(g) and 3(h) of the Statement of Charges.

Respondent failed to ensure sterile conditions prior surgery. Although Respondent's expert witness stated that ther was no infection, the Board found this unpersuasive. Minimum standards of podiatric care require sterile conditions prior to operative procedures. The absence of post-operative infection does not shield a practitioner from charges of negligence in ensuring sterile operative conditions. Letting people in the operating room without cap and mask, and operating on a foot w

the patient's street shoe on the other foot is below the minimum standards required of Podiatrists, and is negligent practice of Podiatry. This negligence violates Conn. Gen. Stat. § 20-59(4), as alleged in section 3(k) of the Statement of Charges.

The Board in formulating its decision acts to ensure proper podiatric care and the protection of public health in the State of Connecticut. The Board members who have participated in the final decision of this case have either read the record or heard the case.

ORDER

Pursuant to its authority under § 19a-17 of the Connecticut General Statutes, the Board of Examiners in Podiatry hereby orders the following:

1. That the Respondent's license to practice be suspended for thirty (30) days effective forty-five days (45) days from the date of the mailing of this decision to the Respondent, which date is noted below, provided that if the Respondent is actively complying with a previous suspension order at that time, this suspension shall be effective immediately following the completion of that previous suspension; and

2. That Respondent is assessed a total fine of $3,500.00, $500 each for 3(a), (b), (g), (h), (i), (j), and (k) of the Statement of Charges. This penalty to be paid to:

Treasurer, State of Connecticut
Department of Health Services
Public Health Hearing Office
150 Washington Street
Hartford, CT 06106

Payment of the fine by certified check shall be made within forty-five (45) days from the date of the mailing of this decision to the Respondent, which date is noted below.

CONNECTICUT BOARD OF EXAMINERS
IN PODIATRY

David Under, D.P.M.
Chairman

Date of mailing of this decision
to the Respondent Sept. 9, 1988

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

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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 perioid 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

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