

Rec'd 9/89 LAB  
10-2-89  
JB

STATE OF CONNECTICUT  
BOARD OF EXAMINERS IN PODIATRY

In Re: Gary Fleischman, D.P.M.  
License No. 059  
Petition No. 890608-19-006

Memorandum of Decision

The Department of Health Services (Department) presented the Connecticut Board of Examiners in Podiatry (Board) with a Statement of Charges, dated July 20, 1989, brought against Gary Fleischman, D.P.M., the Respondent. The Statement of Charges alleged in one count that the Respondent had violated Conn. Gen. Stat. § 20-59 in that he performed minimal incision surgery on a patient at a time when his practice of podiatry was restricted to exclude minimal incision surgery.

On the basis of the Statement of Charges and affidavits submitted therewith, the Department requested that the Board summarily suspend the license of Gary Fleischman to practice podiatry in Connecticut. On July 26, 1989 the Board, having found that the public health, safety or welfare of the citizens of Connecticut was in clear and immediate danger, summarily suspended Gary Fleischman's license to practice podiatry in the State of Connecticut pending a final determination by the Board of the allegations contained in the July 20 Statement of Charges.

A Notice of Hearing dated July 26, 1989 was served upon the Respondent and his attorney. Attached to the Notice were the Department's Statement of Charges and Motion for Summary Suspension, as well as the Board's Summary Suspension Order. The hearing was held by the Board on August 2, 1989. The Respondent was represented by counsel and had full opportunity to present evidence and cross-examine witnesses.

### Facts

1. At all times pertinent to this matter the Respondent, Gary Fleischman, D.P.M., held a license to practice podiatry issued by the State of Connecticut, Department of Health Services.

2. In connection with an appeal by the Respondent from a prior decision of the Board, the Superior Court (Wagner, J.) entered an interim order of stay on September 26, 1988 which permitted the Respondent to continue his general practice of podiatry provided that he not perform any minimal incision surgery.

3. By decision dated November 22, 1988, Judge Wagner ordered the continuance of the interim stay order until the pending appeal was decided or the stay order was modified by the

Appellate Court, so that the Respondent could continue his general practice of podiatry provided that he not perform any minimal incision surgery.

4. On or about April 3, 1989, at a time when the Court's order of stay remained in effect, the Respondent performed minimal incision surgery upon his patient, Julia Dunn.

#### Discussion and Conclusion

The Respondent is charged with violating Conn. Gen. Stat. § 20-59 and/or § 20-45 by performing minimal incision surgery at a time when he was legally prohibited from performing such surgery. On the basis of the facts it has found, the Board concludes that the actions of the Respondent constitute illegal conduct in the practice of podiatry in violation of Conn. Gen. Stat. §§ 20-45 and 20-59.

Answering through his attorney, the Respondent did not deny any of the factual allegations contained in the Statement of Charges issued by the Department. Pursuant to Section 19-2a-18(b), Regulations of Connecticut State Agencies, "[a]ny allegation not admitted or denied shall be deemed admitted." Additionally, the documentary evidence before the Board, which was not objected to by the Respondent, independently supports all material claims asserted by the Department.

By performing minimal incision surgery in April of 1989, the Respondent acted in violation of a specific, clearly expressed order of the Superior Court, which in turn had been entered to stay the execution of a prior suspension order of the Board. Such a violation is a serious matter, and is of great concern to the Board in terms of both the integrity of the legal process and the public health, safety and welfare. The Board concludes that the summary suspension of the Respondent's license on July 26, 1989 was an appropriate action and that the suspension of the Respondent's license should remain in effect in accordance with the order set forth below.

Order

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

The license of the Respondent, Gary Fleischman, to practice podiatry in Connecticut ~~be suspended for a period of twelve months, effective back to the date on which the Board issued its Summary Suspension Order, July 26, 1989 and continuing until July 26, 1990.~~

Connecticut Board of  
Examiners in Podiatry

*James Kave, P.P.S.*  
*James C. [unclear]*  
*Ann [unclear]*

Sept. 27, 1989  
Date

By: \_\_\_\_\_