STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

In the Matter of

MARK SHANGOLD, D.P.M. **Petition No. 930802-19-005**
License Number 000183

MEMORANDUM OF DECISION

DECISION

The Board finds in favor of the Department of Public Health and Addiction Services and enters an order (a) subjecting the Respondent's continued practice in podiatry to certain conditions of probation and (b) payment of a civil penalty.

PROCEDURAL BACKGROUND

The Department of Public Health and Addiction Services (the "Department") petitioned the Connecticut Board of Examiners in Podiatry (the "Board") with a Statement and Charges against Mark Shangold, D.P.M. (the "Respondent") dated April 14, 1994. The Statement of Charges alleges in that the Respondent violated subsections (3) and (4) of § 20-59 of the General Statutes of Connecticut. (Department Exhibit 2). The Board served a Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt request (Department Exhibit 2). The Respondent filed a response to the Statement of Charges in an answer dated May 3, 1994. (Respondent Exhibit 1).

On August 3, 1994, the Board conducted a one day hearing in accordance with Chapter 54 of the General Statutes of Connecticut and the Regulations of Connecticut State Agencies § 19-2a-1, et seq. All Board members involved in this decision attest that they have either heard the case or read the administrative record, including the transcript and other evidence received, in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. The Respondent admitted that he holds Connecticut Podiatric License Number 000183. Respondent Exhibit 1.

2. The Respondent admitted that on June 29, 1993, he was at the Barnett Multi Healthcare Facility, Bridgeport, Connecticut to examine and to treat residents. Respondent Exhibit 1.

3. The Respondent admitted that on June 29, 1993, he treated Ms. Susan Orzel, an elderly female resident of the Barnett

Multi Health Care Facility, while she was sitting in a wheelchair. Respondent Exhibit 1; Transcript.

4. The Respondent admitted that during the course of treating Ms. Orzel on June 29, 1993, he slapped her across the face after Ms. Orzel touched the Respondent's face and dislodged his glasses. Respondent Exhibit 1; Transcript at 127.

5. On June 29, 1993, Ms. Lori Graham, a Nurse's Aide employed by the Barnett Multi Health Care Facility, was assigned by the Facility to assist the Respondent during his treatment of the Ms. Orzel and did so. Transcript at 75.

6. The Respondent's conduct described in ¶4 was observed by Ms. Lori Graham, a nurse's aide. Transcript at 77.

7. Ms. Orzel was not a threat to the safety of the Respondent or Ms. Graham. Transcript.

8. The Respondent admitted that he did not chart or make any entry in the patient's medical records regarding the incident described in ¶ 4 above and the Respondent testified that he "didn't at that time see a need to chart it." Transcript at 144.

9. The Respondent didn't think the conduct described in ¶ 4 above was such a big deal that it needed to be written down. Transcript at 146.

10. The incident described in ¶ 4 above is not noted in the podiatry records. Department Exhibit 3; Transcript.

11. The conduct described in ¶ 4 resulted in a reddened area on the face of Ms. Orzel and a little scratch on her nose. Transcript at 18, 30, 50 and 78.

12. The Respondent failed to report Ms. Orzel's injury to any representative of the Barnett Multi Health Care Facility. Transcript at 62-63.

13. The Respondent admitted that he didn't fill out an incident report. Transcript at pp. 149-150.

14. Immediately after the conduct described in ¶ 4, the Respondent told Ms. Graham that it was not acceptable for her to strike patients, but that it was acceptable conduct for him. Transcript at 80.

15. On June 29, 1993, Ms. Graham reported the conduct described in ¶ 4 above to the nursing staff who in turn reported the

incident to the facility administrator, Mr. Gary Caserta. Transcript at 50.

16. On June 29, 1993, Mr. Caserta requested that the Respondent report to him about the incident and was informed by the Respondent that he had a right to defend himself. Transcript at 19.

17. On June 29, 1993, Mr. Caserta and the Respondent agreed that the Respondent should not complete an incident report on the events. Transcript at 135.

CONCLUSIONS OF LAW

1. Subsection (3) of § 20-59 provides the Board may take disciplinary action if it finds fraudulent or deceptive conduct in the course of professional services or activities.

2. Subsection (4) of § 20-59 provides the Board may take disciplinary action if it finds illegal or incompetent or negligent conduct in in the practice of podiatry.

3. When the Respondent slapped Ms. Orzel across the face during the course of treating her, he violated subsection (4) of § 20-59.

4. When the Respondent failed to immediately report the slapping incident to the facility, he violated subsections (3) and (4) of § 20-59.

5. When the Respondent determined that the slapping incident was "no big deal," he violated subsections (3) and (4) of § 20-59.

6. When the Respondent advised the nurse aide that he could slap a patient and that the aide could not, he violated subsections (3) and (4) of § 20-59.

7. When the Respondent agreed with the nursing home administrator not to record or report the incident in writing, he violated subsections (3) and (4) of § 20-59.

8. Based on the violations of subsections (3) and (4) of § 20-59, the Board finds good cause exists under subsection (a) of § 19a-17 to impose disciplinary actions against the Respondent.

9. Under § 19a-17 of the General Statutes of Connecticut, if good cause exists, the Board has the power to take the following actions.

a. Pursuant to subsection (5), to place the practitioner on probation and condition continued practice to report regularly to the Board on matters related to the practice of podiatry.

b. Pursuant to subsection (6), to asses a civil penalty of up to ten thousand dollars.

DISCUSSION

Much of the material factual findings are admitted by the Respondent and need not be discussed here. Testimony from the nurse's aide, the director of nursing, the nursing home administrator and the Respondent were consistent as to the incident and the events immediately following.

The Board found the testimony of Lori Graham, the nurse aide who witnessed the incident, was an extremely credible. Her testimony and the Respondent's conflicted only as to two aspects, neither of which resolve in favor of the respondent. Both testified that the patient dislodged the Respondent's glasses, but disagree as to exactly how she may have done so. Both testified that the Respondent, in reaction thereafter, slapped the patient quickly and without regard to patient safety. While the degree of force used by the Respondent was subject to some dispute, this issue does not need to be resolved. The fact that the slap occurred is established by Respondent's own admission. Even if the patient dislodged the Respondent's glasses, she did not do so in a manner or with such force as to warrant the Respondent's reaction.

Slapping a patient is not an acceptable practice no matter how forceful, except in the rarest occasion and in an extreme emergency, none of which is even suggested in the present case. The Respondent's actions were not in self defense nor was the patient a threat to the Respondnet's safety or the nurse's aide. There was no justification for Respondent's conduct.

The Respondent admitted saying that when he got hit, he'd hit back. Transcript at 147-148. While the Respondent acknowledges that such conduct is not acceptable as a practitioner, the Respondent was not able to explain his actions on a rational or factual basis nor was he able to demonstrate the ability to control the impulse to strike back at a patient at least on this one occasion.

As to the reporting of the incident, the Board feels that the Respondent should have known that an incident report was necessary and this should have been filled out immediately. Also, the failure of the Respondent to immediately report the incident to any representative of the facility is unacceptable. The Respondent's statements to the nurse's aide are inconsistent

with acceptable health care practice and without any justification.

The discussion with the nursing home administrator, which was not prompted by the Respondent, does not relieve the Respondent of his obligation to report the incident. The Respondent provides podiatry pursuant to a license to him in his own name and the obligations attendant to the license cannot be waived by such an agreement.

The Board appreciated the Respondent's forthright answer to the statement of charges and accepted the testimony of witnesses called by the Respondent which supported the proposition the incident was out of character for the Respondent. The Board received testimony on the many years of service during which time no other incidents were known to witnesses, including his own private practice office staff. The Petitioner rested its case solely on the events of June 29, 1993. However, the events of June 29, 1993, as to the slapping incident and actions immediately thereafter, represent a very serious matter in the practice of podiatry. A patient has a right to be free of physical harm and especially from a licensed practitioner during the course of treatment. Detection of such incidents is extremely evasive. Substantiated violations are not to be taken lightly.

As to the statement of charges, the Board found that the Department proved the allegations in ¶ 4 and each subpart thereunder based on the Respondent's admissions and evidence provided by the Petitioner. Based on the foregoing, the Board found good cause exists to impose disciplinary actions under subsection (a) of § 19a-17 of the General Statutes of Connecticut. The Board found in favor of the Petitioner.

ORDER

Pursuant to the authority vested in it by Connecticut General Statutes Sections 19a-17 and 20-59, the Board orders the following in this case against Mark Shangold, D.P.M., Petition Number 930802-19-005:

1. The Respondent be placed on probation for a period of two years commencing upon the date of this order under subdivision (5) of subsection (a) in § 19a-17 of the General Statutes of Connecticut based on the existence of good cause, subject to the following conditions:

    a. that he undergo a psychological evaluation within 30 days of the date of this order and cause a report,

including a treatment plan, if any, to be submitted to the Board; and

b. that he participate in therapy if recommended by the therapist as a result of paragraph (a) above, on either a group or individual basis, offered by a provider approved by the Department, and cause the provider to submit monthly reports on his progress; and

c. cause his business partner and the administrator of any health care facility wherein the Respondent performs podiatry treatment to submit monthly reports to the Department on his activities, including any specific incident that does not or may not conform to acceptable practice, during the period of probation.

2. Pay a civil penalty to the Department within sixty (60) days of the date of this order in the amount of $2,000 under subdivision (6) of subsection (a) in § 19a-17 of the General Statutes of Connecticut based on the existence of good cause as follows:

a. $1,000 for slapping the face of a patient and

b. $1,000 for failing to completely, properly, or accurately complete the patient records of an elderly female resident, improperly instructing a nurse's aide about the incident, and agreeing with a third party, the nursing home administrator, to not make reports related to the reportable incident.

Further, the Board retains jurisdiction over this matter during the probation period and, in the event that (1) the Respondent fails to comply with this order or (2) the Respondent strikes a patient for whatever reason, the Board shall revoke the license without any further proceeding, except that the Board will receive evidence as to the alleged event, if not admitted by the Respondent.

3-27-95
Date

Mark Greenberg Chairman
By: Connecticut Board of Examiners in Podiatry