

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS IN PODIATRY**

Joseph Zebrowski
133 Pearl Street
Enfield, CT 06082

Petition Number: 2001-0111-019-002

MEMORANDUM OF DECISION

Procedural Background

On February 7, 2002, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against the Connecticut podiatrist license of Joseph Zebrowski ("respondent"). Board Exh. 1. The Charges and Notice of Hearing were hand delivered by a Marshal on April 15, 2002. The Notice of Hearing informed the parties that a hearing would be held before the Connecticut Board of Examiners in Podiatry ("the Board") on Wednesday, May 8, 2002. Dept. Exh. 1.

During the hearing on May 8, 2002, the Department made a Motion to Amend the Statement of Charges, which the Board granted. Dept. Exh. 2. The Department further made a Motion to Deem the Allegations Admitted which the Board denied. Dept. Exh. 3. During the hearing, respondent introduced his letters addressed to the Department dated April 29 and May 2, 2002, into the record as his Answer to the Charges. Resp. Exh. A, B.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act). All Board members involved in this decision received copies of the entire record and attest that they either heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges Joseph Zebrowski of Enfield is, and has been at all times referenced in the Charges, the holder of Connecticut podiatrist license number P00284.
2. In paragraph 2 of the Charges, the Department alleges Martin Cusick was a patient of respondent from 1989 through 1999.

3. In paragraph 3 of the Charges, the Department alleges that during 2000, Mr. Cusick requested that respondent provide him with a copy of his medical records.
4. In paragraph 4 of the Charges, the Department alleges that respondent failed to provide Mr. Cusick the copies of his medical records, as requested.
5. In paragraph 5 of the Charges, the Department alleges that during 2001, the Department requested that respondent provide it with a copy of Mr. Cusick's medical records.
6. In paragraph 6 of the Charges, the Department alleges that respondent failed to provide the Department with copies of Mr. Cusick's medical records, as requested.
7. In paragraphs 7 and 8 of the Charges, the Department alleges that respondent failed to create and maintain medical records for his treatment of Mr. Cusick in violation of the Connecticut Public Health Code §19a-14-40.
8. In paragraph 9 of the Charges, the Department alleges that respondent's conduct constitutes grounds for disciplinary action pursuant to Connecticut General Statutes §20-59.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut podiatrist license number P00284. Dept. Exh. 4.
2. The evidence is insufficient to establish Mr. Cusick was a patient of respondent continuously from 1989 through 1999, but is sufficient to establish that he was a patient of respondent in August 1996 and February 1999, as reflected on the prescriptions and certificates of professional care. Dept Exhs. 4-7, 9, 10; Tr. 5/8/02 pp. 26-32, 34, 36-40.
3. The signature on the prescriptions is deemed that of respondent. Dept. Exh. 6; Tr. 5/8/02 pp. 48-52.
4. In 2000, Mr. Cusick requested respondent provide him with a copy of Mr. Cusick's medical records. Mr. Cusick spoke with respondent's wife when he made this request. Tr. 5/8/02 pp. 27-29.
5. Respondent failed to provide Mr. Cusick with copies of his medical records, as requested. Tr. 5/8/02 pp.27-29.
6. In 2001, the Department requested that respondent provide it with a copy of Mr. Cusick's medical records. Dept. Exh. 10; Tr. 5/8/02 pp. 29.

7. Respondent failed to provide the Department with copies of Mr. Cusick's medical records, as requested. Dept. Exh. 10.
8. There is insufficient evidence to establish whether respondent failed to create medical records for his treatment of Mr. Cusick. Tr. 5/8/02 pp. 68, 69.
9. Respondent failed to meet the standard of care by failing to maintain and provide medical records when requested. Dept. Exh. 10, Tr. 5/8/02 pp. 49-51, 65-71.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Commissioner of Public Health*, CV 970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

Section 19a-10 of the Connecticut General Statutes provides in pertinent part, “[Boards] may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health.”

Pursuant to Connecticut General Statutes §20-59 the Board “may take any of the actions set forth in section 19a-17 for . . . incompetent or negligent conduct in the practice of podiatry.”

As a podiatrist, and in accordance with Connecticut Public Health Code §19a-14-41, respondent is required to “maintain appropriate medical records of the assessment diagnosis, and course of treatment provided each patient, and such medical records shall be kept for the period prescribed.” Section 19a-14-42 specifies that medical records shall be retained for a period of seven (7) years.

Section 19a-14-40 of the Connecticut Public Health Codes provides the purpose and definition of medical records as:

A vehicle for: documenting actions taken in patient management; documenting patient progress; providing meaningful medical information to other practitioners should the patient transfer to a new provider or should the provider be unavailable for some reason. A medical record shall include, but not be limited to, information sufficient to justify any diagnosis and treatment rendered, dates of treatment, actions taken by non-licensed persons when ordered or authorized by the provider; doctor's

orders, nurses notes and charts, birth certificate work-sheets, and any other diagnostic data or documents specified in the rules and regulations. All entries must be signed by the person responsible for them.

Moreover, §20-7c(a) and (b) of the Connecticut General Statutes, requires that providers supply patients with their medical records upon request.

The Board relied on the training and experience of its members in making its findings of facts and conclusions of law. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994). The Department has sustained its burden of proof by the submission of ample evidence establishing Mr. Cusick was a patient of respondent. FF 2,3. While the evidence was insufficient to establish that he was respondent's patient for the entire time period of 1989 through 1999, as alleged, the evidence was sufficient to establish that Mr. Cusick was respondent's patient at least in 1996 and 1999 based on prescription records. FF 2. Respondent speculated that it is possible his prescription pads were stolen; however, the signature on the prescriptions supplied by Mr. Cusick bears respondent's full middle name, which was likely not known by Mr. Cusick. Therefore, the signature on the prescriptions are deemed that of respondent, indicating Mr. Cusick was his patient. FF 3. In reaching this conclusion the Board relied on the following: (1) the testimony of the Department's witness, whom it found credible; and (2) the testimony of respondent, whom it found lacked credibility.

Despite the foregoing, respondent was unable to find or produce Mr. Cusick's medical records upon request, as was his obligation as a licensed podiatrist. FF 4-7, 9. Thus, respondent has failed to meet the minimum standard of care in his practice as set forth in §19a-14-40 of the Connecticut Public Health Code, and his license is subject to disciplinary action as prescribed in Connecticut General Statutes §§19a-17(a) and 20-59 for his incompetent and negligent maintenance of medical records. FF 9.

Order

Pursuant to the authority vested in it by §§19a-17 and 20-59 of the Connecticut General Statutes, the Board orders:

1. Respondent's license number P00284 to practice as a podiatrist in the State of Connecticut is hereby reprimanded.

2. Respondent shall obtain at his own expense, the services of a podiatrist, pre-approved by the Department ("supervisor"), to conduct a quarterly random review of five percent (5%) or 25 charts from respondent's records, created or updated for one year whichever is the larger number. In the event respondent has 24 or fewer patients, the monitor shall review all of respondent's records.
 - a. Respondent's supervisor shall meet with him not less than once every three months during the one-year probationary period.
 - b. The supervisor shall have the right to monitor respondent's practice by any other reasonable means, which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.
 - c. Respondent shall be responsible for providing written supervisor reports directly to the Department of Public Health for the one-year probationary period. Such supervisor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the patient records and patient medication orders and prescriptions reviewed, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and safety.

9/18/02
Date


By: Martin Pressman, D.P.M., Chairperson
Connecticut Board of Examiners in Podiatry