

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

Joseph Zebrowski, DPM

Petition Number: 2002-0716-019-003

MEMORANDUM OF DECISION

Procedural Background

On April 15, 2002, the Department of Public Health (hereinafter "Department") presented the Connecticut Board of Examiners in Podiatry (hereinafter "Board") with a Statement of Charges (hereinafter "Charges") and a Motion for Summary Suspension brought against podiatrist license number P00284 of Joseph Zebrowski, D.P.M. (hereinafter "respondent"). Dept. Exh. A. The Motion for Summary Suspension was based on the Charges, affidavits, and the Department's information and belief that respondent's continued practice of podiatry represented a clear and immediate danger to the public health and safety. The Charges alleges that respondent violated Conn. Gen. Stat. §§ 19a-17 and 20-59. Dept. Exh. A.

On May 21, 2003, the Board granted the Department's motion and ordered respondent's license summarily suspended pending a final determination by the Board regarding the allegations contained in the Charges. Bd. Exh. 2.

On June 11, 2003, the Board held an administrative hearing to adjudicate respondent's case. Although the Department made sufficient and reasonable efforts to effectuate notice, respondent neither appeared nor was represented; Ellen Shanley, Esq. represented the Department. Dept. Ex. B; Transcript, pp. 2-3.

On June 11, 2003, the Department made a motion to deem the allegations admitted. Dept. Exh. B. During the hearing, the Department granted the motion. Transcript, p. 8.

The Board conducted the hearing in accordance with Conn. Gen. Stat., Chapter 54 (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 and 7 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.

First Count

2. In paragraph 2 of the Charges, the Department alleges that on September 18, 2002, the Board issued a Memorandum of Decision in Petition Number 2001-0111-019-002 (hereinafter "September 2002, Decision") that placed respondent's podiatric license on probation for a period of one year. Such disciplinary action was based upon proof of respondent's failure to maintain medical records for Martin Cusack and to provide the medical records of Martin Cusack upon request.
3. In paragraph 3 of the Charges, the Department alleges that the September 2002, Decision specifically provided that the respondent obtain the services of a pre-approved podiatrist to conduct a review of respondent's records and/or to monitor respondent's practice.
4. In paragraph 4 of the Charges, the Department alleges that the September 2002, Decision specifically provided that the respondent be responsible for providing written reports from said pre-approved podiatrist.
5. In paragraph 5 of the Charges, the Department alleges that respondent has failed to comply with the September 2002, Decision.
6. In paragraph 6 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation as set forth in the September 2002, Decision, and subjects respondent's license to revocation or other disciplinary action authorized by Conn. Gen. Stat. §§ 19a-17 and 20-59.

Second Count

7. In paragraph 8 of the Charges, the Department alleges that on or about October 16, 2002, the Board ordered respondent to undergo a mental examination to evaluate his mental and emotional state and his capacity to practice safely as a podiatrist.
8. In paragraph 9 of the Charges, the Department alleges that the initial examination was to be on or before November 15, 2002.
9. In paragraph 10 of the Charges, the Department alleges that the results of the mental examination were to be provided to the Department.

10. In paragraph 11 of the Charges, the Department alleges that to date, respondent has failed to comply with the October 2002, Order.
11. In paragraph 12 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to Conn. Gen. Stat. § 20-59.

Findings of Fact

1. The Department provided respondent with reasonable and adequate written notice of the allegations contained in the Charges and the necessity that he file an Answer and appear at the hearing. Dept. Exh. 1.; Bd. Exh. 2.
2. Respondent did not submit an Answer to contest the allegations contained in the Charges.
3. On the eve of the hearing, that is, on June 11, 2003, the Respondent faxed a document to the Board purporting to be a response to the Charges. The Board finds that the document is unresponsive to the allegations in the Charges and that, therefore, it fails to meet the requirement for an Answer. Bd. Exh. 1; Transcript pp. 3-4, 5-7.
4. The allegations contained in paragraphs 1 through 12, inclusive, of the Charges, as set forth above, are deemed admitted and true.

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*, 1998 Conn. Super. LEXIS 440 (Feb. 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 ... (4) ... incompetent or negligent conduct in the practice of podiatry; ...".

The Board finds that the Department has sustained its burden of proof with regard to all of the allegations in the Charges. Since respondent failed to file an Answer, the allegations are deemed admitted. *See* Regs. of Conn. State Ag. § 19a-9-20.

Thus, respondent has failed to meet the minimum standard of care in his practice as set forth in Regs. of Conn. State Ag. § 19a-14-40, and his license is subject to disciplinary action as prescribed in Conn. Gen. Stat. §§ 19a-17(a) and 20-59.

Order

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by Conn. Gen. Stat. §§ 19a-17 and 20-59, the Board orders that Connecticut podiatrist license number P00284, held by Joseph Zebrowski, D.P.M., be revoked.

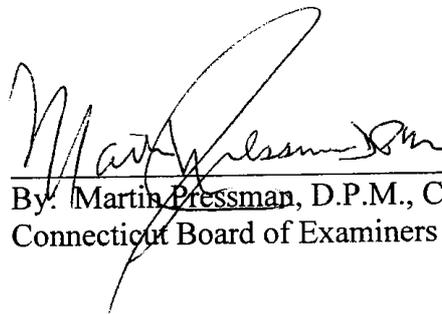
1. Respondent shall immediately surrender his license to practice as a podiatrist to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 34308
Hartford, CT 06134-0308

2. All other actions required by respondent in accordance with the provisions of the September 2001, Decision and the October 2002, Order shall cease upon the effective date of this Order.
3. This Order shall become effective upon the signature of the Board Chairperson.

9-10-03

Date



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