

STATE OF CONNECTICUT  
CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

Denis Kalfus, D.P.M.

Petition No. 2003-0116-019-001

**MEMORANDUM OF DECISION**  
*Procedural Background*

The Department of Public Health ("the Department") presented the Connecticut Board of Examiners in Podiatry ("the Board") with a Statement of Charges ("the Charges") brought against Denis Kalfus, D.P.M. ("respondent") dated April 9, 2003.

Dept. Exh. 1. On or about July 7, 2003, the Charges and Notice of Hearing were sent to respondent by certified mail, return receipt requested and first class mail. Dept. Exh. 1.

On or about August 20, 2003, respondent filed an Answer to the Charges. Rt. Exh. A.

On September 10, 2003, the Board held an administrative hearing to adjudicate respondent's case. Attorney Joelle Newton represented the Department; and, respondent appeared, *pro se*.

The Board conducted the hearing in accordance with *Conn. Gen. Stat.*, Chapter 54 (the Uniform Administrative Procedure Act) and §§19a-9-1, *et seq.* of the Regulations of the State Agencies. All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S&H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

*Allegations*

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut podiatry license number P00320.
2. In paragraph 2 of the Charges, the Department alleges that on or about December 19, 2002, respondent was convicted in United States District Court for the District of Connecticut of wire fraud, in violation of Title 18 U.S.C. §1343, in a scheme to defraud Medicare.

3. In paragraph 3 of the Charges the Department alleges that the above facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.*, §20-59, including but not limited to subsections (2) and/or (4).

***Findings of Fact***

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut podiatry license number P00320. Rt. Exh. 3.
2. On or about December 19, 2002, respondent was convicted in United States District Court for the District of Connecticut of wire fraud, in violation of Title 18 U.S.C. §1343, in a scheme to defraud Medicare. The conviction was based on a guilty plea, agreed upon in a July 30, 2002 plea agreement. Tr. pp. 7-8, 17, 34; Dept. Exh. 2, pp. 10-16.
3. The plea agreement expressly states, "The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. . . ." Dept. Exh. 2, p. 14.
4. The crime occurred in the course of respondent's practice of podiatry in that respondent admitted creating and implementing a scheme to defraud Medicare by causing to be submitted to Medicare, false and fraudulent claims for reimbursement for medical services he did not render. Because such claims were transmitted over telephone lines, respondent was charged with and pleaded guilty to one count of wire fraud. Tr. pp. 33-34, 43-44; Dept. Exh. 2, p. 1, 10, 17.
5. As a result of the conviction, respondent was sentenced to two years probation and a \$10,000 fine. Tr. p. 17.
6. As part of the plea agreement, respondent also agreed to enter into a civil settlement agreement to pay restitution in the amount of \$811,358.45, and to surrender his Connecticut podiatric license. Tr. p. 17; Dept. Exh. 2, p. 4, 11-12.
7. At no time has respondent surrendered his Connecticut podiatric license. Instead, he simply let his license lapse in December 2002, by not renewing it. Tr. pp. 17-18, 20-21.
8. In February of 2003, the Department offered respondent the opportunity to execute a document entitled, "Voluntary Agreement Not To Renew License," which he declined to execute. Tr. pp. 40-41; Dept Exh. 4.
9. Respondent has paid the restitution in full. Tr. p. 39.

### *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 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

Section 19a-10 of the Connecticut General Statutes provides in pertinent part, "Any board 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."

*Conn. Gen. Stat. §20-59(2) and (4)* provides that:

The board may take any of the actions set forth in section 19a-17 for any of the following reasons: . . . (2) conviction in a court of competent jurisdiction, either within or without this state, of any crime in the practice of podiatry; . . . (4) illegal or incompetent or negligent conduct in the practice of podiatry; . . ."

A preponderance of evidence establishes that on July 30, 2002, respondent entered into a plea agreement whereby he admitted having engaged in one count of wire fraud for conduct that occurred in his practice of podiatry. This plea agreement resulted in a conviction of wire fraud on or about December 19, 2002 in the United States District Court for the District of Connecticut. Because the conviction arose out of respondent's admitted scheme to defraud Medicare, it constitutes illegal conduct and a crime committed while respondent was practicing podiatry, and is a sufficient basis for disciplinary action pursuant to *Conn. Gen. Stat. §20-59(2) and (4)*.

As part of the plea agreement, respondent also agreed to make restitution and to surrender his license to practice podiatry in Connecticut. Rather than surrender his license, he merely let his license lapse, and refused to execute a "Voluntary Agreement Not To Renew or Reinstate License" which would have been comparable to a "Voluntary Agreement To Surrender License." The lapse of a license does not have the same legal consequences as a formal agreement to surrender or not to renew a license. In particular, a mere failure to renew a license is not reportable to the Health Integrity and Protection

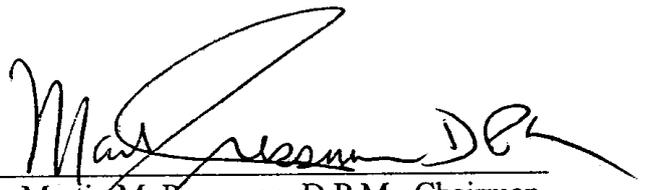
Data Bank ("the HIPDB"), whereas, a formal agreement to surrender or not to renew a license is reportable and, thus, creates a record accessible by other state licensing authorities and facilities. The purposes of the HIPDB would be defeated if a licensee were permitted merely to let a license lapse or simply to return a license to the licensing authority in lieu of executing a formal surrender or agreement not to renew a license while an action is pending. Therefore, respondent's mere non-renewal of his license is not a sufficient penalty for his fraudulent and illegal conduct, and also did not comply with the terms of his plea agreement that required a formal surrender of his Connecticut license.

**Order**

Pursuant to the authority vested in it by *Conn. Gen. Stat.* §§19a-17 and 20-59, the Board hereby orders that respondent's license number P00320 to practice as a podiatrist in the State of Connecticut, be immediately **REVOKED**.

12/10/03

Date

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