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STATE OF CONNECTICUT  
BOARD OF EXAMINERS IN PODIATRY

IN RE:

Mark Baer, D.P.M.  
Petition No. 87721-19-003  
% Kathleen A. Murrett, Esq.  
Law Offices of C. Michael Budlong  
89 Oak Street  
Hartford, CT 06106

MEMORANDUM OF DECISION

The Board of Examiners in Podiatry was presented with a Notice of Hearing dated July 21, 1989, and Complaint dated July 17, 1989, by the Department of Health Services. The Statement of Charges alleged violations by Marc Baer, D.P.M. of Chapter 375 of the Connecticut General Statutes, section 20-59. The Notice of Hearing provided that the hearing would take place on August 16, 1989, and August 30, 1989, at 9:00 a.m. The hearing did begin on August 16, 1989, and continued on August 30, 1989, September 27, 1989, November 22, 1989, and was concluded on January 10, 1990. Each member of the Board of Examiners in Podiatry involved in this decision attests that he has reviewed the record, and that this decision is based entirely on the record.

FACTS

1. Marc Baer, D.P.M. is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut podiatric license number P00326.
2. Dr. Baer treated Ernest Bassett, Jr. beginning on January 13, 1987 through May 13, 1987.
3. During diagnosis, treatment or follow-up visits, Dr. Baer took x-rays of Ernest Bassett, Jr. on more than one occasion.
4. Dr. Baer did not take lateral or axial views of Ernest Bassett, Jr.'s foot when taking x-rays of this patient prior to surgery.

5. Dr. Baer performed an Austin Bunionectomy on Ernest Bassett, Jr. on January 27, 1987.
6. Dr. Baer treated Ernest Bassett, Sr. between November 4, 1986, and February 26, 1987.
7. During diagnosis, treatment or follow-up visits, Dr. Baer took x-rays of Ernest Bassett, Sr. on more than one occasion.
8. Dr. Baer did not take any lateral or axial x-ray views of Ernest Bassett, Sr.'s foot as part of his pre-operative procedure.
9. Dr. Baer performed a total swanson joint replacement of the right first metatarsal, a fibula sesamoid excision of the right foot, an osteotomy of the right second metatarsal, an arthroplasty of the right second digit and a tendon correction of the right second extensor digitorum on the longus tendon on Ernest Bassett, Sr. on November 13, 1989.
10. Dr. Baer treated Nick Cacicedo between April 2, 1986, and July 23, 1986.
11. During diagnosis, treatment or follow-up visits, Dr. Baer took x-rays of Nick Cacicedo on more than one occasion.
12. Dr. Baer's records indicate that on April 17, 1986, he gave Nick Cacicedo "20 cc's of plain Xylocaine and 30 cc's of Marcaine .5 with epi in both local infiltratory and Mayo blocks of his left first through fifth metatarsal head and neck areas." (Exhibit No. 25, Notes signed by Dr. Marc S. Baer).
13. Dr. Baer treated Eleanor Lewis on or about June 8, 1987 until on or about September 16, 1987.
14. During diagnosis, treatment or follow-up visits, Dr. Baer took x-rays of Eleanor Lewis on more than one occasion.
15. Dr. Baer performed a metatarsal cuneiform exostosis on Eleanor Lewis on June 18, 1987.
16. Dr. Baer did not take any lateral x-ray views of Eleanor Lewis' foot prior to surgery.

17. From her chart, Dr. Baer was aware that Eleanor Lewis had a history of ulcerative colitis, but it was inactive at the time Dr. Baer began treating her.

18. On July 28, 1987, Dr. Baer prescribed meclomen for Eleanor Lewis.

19. Dr. Baer treated Sharon Bloniarz between January 13, 1987, and July 2, 1987.

20. During diagnosis, treatment or follow-up visits, Dr. Baer took x-rays of Sharon Bloniarz on more than one occasion.

21. Dr. Baer performed surgery on Sharon Bloniarz' left foot on January 22, 1987.

22. Prior to the surgery, Dr. Baer's records indicate that "[t]he patient received 10 mg. of Versed IM prior to surgery to help accomplish sedatory effects. The patient then received 30 cc's of Marcaine .5 with epi. and 20 cc's of plain Xylocaine in both local infilatory and Mayo blocks of her left second and third phalangeal joint areas." (Exhibit No. 3, Report on Operation dated January 22, 1987).

#### DISCUSSION AND CONCLUSIONS

Connecticut General Statutes, section 20-59 provides in pertinent part that:

The Board may take any of the actions set forth in section 19a-17 for any of the following reasons: ... (3) fraudulent or deceptive conduct in the course of professional services or activities; (4) illegal or incompetent or negligent conduct in the practice of podiatry.

The Board heard testimony from both parties on all counts in the Complaint. Both parties were given the opportunity to respond and present evidence and argument on all issues, and were permitted to conduct cross examination. Expert testimony was presented by Dr. Thomas H. Walters, D.P.M. on behalf of Dr. Baer, Dr. Gray P. Jolly, D.P.M., called by the Department of Health Services and Dr. Francis Rieder, D.P.M., a podiatrist who provides services at the Rockville Memorial Nursing Home. In addition, Dr. Baer testified, as did several of his patients and

staff, David Baer, a notary public and staff from the Rockville Memorial Nursing Home. The Board listened to, and has reviewed the testimony provided, and has taken it into consideration in reaching its conclusions. The Board also reviewed over eighty exhibits submitted by the parties.

#### First and Second Counts

After reviewing x-rays taken by Dr. Baer of the patient Ernest Bassett, Jr. (Exhibits No. 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 43), the Board finds the x-rays sufficiently substandard to have little or no diagnostic value. The x-rays are hazy and lack sufficient contrast to indicate good bone definition. The Board finds Dr. Baer guilty of 4(a) of the First Count.

When reviewing these same x-rays of Ernest Bassett, Jr. in conjunction with records concerning this patient submitted to the Department of Health Services by Dr. Baer (Exhibits No. 23), the Board finds that there was no medical indication for the large number of x-rays taken. Therefore, the number of x-rays taken of Ernest Bassett, Jr. was excessive. The Board finds Dr. Baer guilty of 4(b) and 4(c) in the First Count. Dr. Baer is in violation of Conn. Gen. Stat. § 20-59(4) as to Count One.

The Board finds that pre-operative planning for an osteotomy requires that the podiatrist take lateral and axial views of the foot. Since Dr. Baer did not take either of these views prior to surgery, the Board finds the performance of surgery on Ernest Bassett, Jr. with insufficient pre-operative x-rays to be below the minimum standards required of podiatrists, and inappropriate. Reviewing the pre-operative x-rays taken by Dr. Baer of Ernest Bassett, Jr., the Board finds that they were unclear, making surgery inappropriate. Therefore, Dr. Baer is guilty of 3(a) and 3(b) which constitute a violation of Conn. Gen. Stat. § 20-59(4) as to the Second Count.

#### Third and Fourth Counts

After reviewing the records submitted regarding Dr. Baer's treatment of Ernest Bassett, Sr. and the x-rays taken by Dr. Baer of this patient, the Board finds Dr. Baer guilty of 4(a), 4(b) and 4(c) of the Third Count. The x-rays of Ernest Bassett, Sr. (Exhibits No. 37, 38, 39, 40, 41, 42 and 44) were found to

be sufficiently substandard to provide little or no diagnostic value. Since the medical record (Exhibit No. 24) did not support the need for the number of x-rays taken, they were excessive in number. The x-rays were inappropriate, and this conduct constitutes a violation of Conn. Gen. Stat. § 2-59(4) as to the Third Count.

The Board finds that in the Fourth Count, No. 3(a) and 3(c) appear to be the same charge. Dr. Baer is guilty of 3(a) and 3(c) for his failure to take lateral and axial views of Ernest Bassett, Sr. prior to surgery for an Austin Bunionectomy, making surgery inappropriate. Further, the Board found that the pre-operative x-rays lack contrast and are so hazy as to make it difficult to see bone definition. Since the x-rays were not of sufficient diagnostic value, the performance of surgery was inappropriate as to 3(b) of the Fourth Count. The Board finds that the medical record did support the need for treatment, and therefore Dr. Baer is not guilty of 3(d) of the Fourth Count.

Dr. Baer's conduct as to 3(a), (b) and (c) of the Fourth Count constitutes a violation of Conn. Gen. Stat. § 20-59(4).

#### Fifth and Sixth Count

After reviewing the x-rays taken by Dr. Baer of his patient Nick Cacicedo (Exhibits No. 45, 46, 47, 48, 49, 50 and 51) the Board finds the x-rays sufficiently substandard to provide little or no diagnostic value due to lack of good bone definition. Therefore, the Board finds Dr. Baer guilty of 4(a) of the Fifth Count. Based upon a review of the medical record of Nick Cacicedo (Exhibit No. 25), the Board found no evidence for the necessity of taking x-rays on May 14, 1986 and June 6, 1986 in addition to the x-rays taken on other dates. Therefore, the Board finds Dr. Baer guilty of 4(b) and 4(c) of the Fifth Count. By reason of the foregoing violations, Dr. Baer is found guilty of violating Conn. Gen. Stat. § 20-59(4).

In the Sixth Count, the Department of Health Services charges that Dr. Baer negligently performed surgery on Nick Cacicedo for the following reasons: (i) that the surgery lasted an excessive amount of time (Amendment to Complaint on 11/22/89) or (ii) that he used 50 cc's of local anesthesia. The Board finds Dr. Baer not guilty of 4a(i) or 4a(ii) of the Sixth Count. There was no evidence presented as to the strength of the 50 cc's of local anesthesia used, and therefore, the Board could

not determine if Dr. Baer acted negligently or incompetently. A low percentage of the concentrations of the quantities of anesthesia used could be within the minimum standards for the practice of podiatry.

The parties stipulated on 8/16/89 that the operation Dr. Baer performed on Nick Cacicedo took between three and four hours to perform (Transcript, p. 9). The Board does not have enough evidence to find that this was excessive for this particular patient.

The Board does find that the medical record was incorrect in that Dr. Baer did not accurately indicate the amount of local anesthesia given to Nick Cacicedo because the records do not state the strength of the anesthesia given, only the total amount of cc's given. Therefore, the Board finds Dr. Baer guilty of 4(b)(1) of the Sixth Count which constitutes a violation of Conn. Gen. Stat. § 20-59(4).

#### Seventh and Eighth Counts

After reviewing x-rays of the patient Eleanor Lewis taken by Dr. Baer (Exhbits No. 52, 53, 54, 55, 56 and 57), the Board finds that the x-rays are sufficiently substandard as to have little or no diagnostic value. Dr. Baer is guilty of 4(a) of the Seventh Count.

These same x-rays of Eleanor Lewis reveal that Dr. Baer did not take a lateral x-ray view prior to performing metatarsal cuneiform exostosis. In doing this particular surgery, a lateral view is necessary in order to visualize the operative site in terms of bony involvement. As Dr. Baer did not take a lateral x-ray view prior to performing surgery on Eleanor Lewis, the Board finds that this does not meet the minimum standards of podiatry, and therefore finds Dr. Baer guilty of 4(b) of the Seventh Count.

The Board finds that 4(c) and 4(d) of the Seventh Count to be essentially the same. After reviewing the medical records for Eleanor Lewis (Exhibt No. 26) in conjunction with the x-rays taken by Dr. Baer, the Board finds that the record does not support the need for the number of x-rays taken. Therefore, the x-rays were excessive in number, and Dr. Baer is guilty of 4(c) and 4(d) of the Seventh Count. The conduct which the Board has found Dr. Baer guilty of in the Seventh Count (4a-d) constitutes a violation of Conn. Gen. Stat. § 20-59(4).

Dr. Baer admits that he prescribed meclomen to Eleanor Lewis, knowing that she had a history of ulcerative colitis. However, the record indicates that it was inactive at the time Dr. Baer treated her. Although the Board does not consider this practice to be at the maximum level of care, it does not violate the minimum standard of care. Therefore, Dr. Baer is not guilty of 3(a) of the Eighth Count. There was sufficient evidence presented that Dr. Baer did give the patient a proper warning about taking meclomen. Therefore, the Board finds Dr. Baer not guilty of 3(b) of the Eighth Count. And in reviewing the testimony of Eleanor Lewis on August 30, 1989, the Board concludes that there is insufficient evidence to find Dr. Baer guilty of 3(c) of the Eighth Count.

As to 3(d) and 3(e) of the Eighth Count, the Board finds, after reviewing the x-rays of Eleanor Lewis taken by Dr. Baer, and reviewing her medical record, that Dr. Baer is guilty. It has been established that surgery was performed without taking a lateral x-ray view, and thus, without a proper foundation. The Board finds that Dr. Baer's treatment of Eleanor Lewis as to 3(d) and 3(e) fell below the minimum standard of care for podiatrists and that this constitutes a violation of Conn. Gen. Stat. § 20-59(4).

#### Ninth and Tenth Counts

After reviewing the x-rays of the patient, Sharon Bloniarz, taken by Dr. Baer (Exhibits No. 4, 5, 6, 7 and 8), the Board finds that the x-rays are sufficiently sub-standard to provide little or no diagnostic value due to their hazy quality resulting in a lack of good bone definition. The Board reviewed these x-rays of Sharon Bloniarz in conjunction with her medical records (Exhibit No. 3) and finds that Dr. Baer did not necessarily take an excessive number of x-rays; that the record and the procedures performed on Mrs. Bloniarz may well support the need for five x-rays. Also, the Board found none of the x-rays to be double-exposed. Therefore, Dr. Baer is not guilty of 4(b), 4(c), or 4(d) of the Ninth Count.

The Board finds that the violation of 4(a) of the Ninth Count constitutes a violation of Conn. Gen. Stat. § 20-59(4).

The Board did not find sufficient evidence to prove that Dr. Baer improperly gave an injection or that he called it only a miracle drug. Therefore, the Board finds Dr. Baer not guilty

of 3(a) of the Tenth Count. Similarly, the Board did not find sufficient evidence to prove that Dr. Baer did not perform metatarsal surgery on Sharon Bloniarz. The Board finds Dr. Baer not guilty of 3(b) of the Tenth Count.

The Board reviewed the medical records of Sharon Bloniarz (Exhibit No. 3). Based on the type of surgery performed, the Board finds that the anesthesia given was very excessive and that this constitutes improper care by Dr. Baer. Therefore, the Board finds Dr. Baer guilty of 3(c) of the Tenth Count, which constitutes a violation of Conn. Gen. Stat. § 20-59(4).

#### Eleventh Count

Although the Board finds that it may be a professional courtesy and usual practice for a podiatrist to indicate to a nursing home staff that he is there at the commencement of treating a patient, the evidence suggests that this may not always be practicable, and that in fact there may be times at Rockville Memorial Nursing Home when the desk is not within the charge nurse's eyesight. Failure to notify nurses of the nature of treatment Dr. Baer intended to provide, and failure to notify nurses of the type of treatment Dr. Baer actually did provide would not necessarily fall below the minimum standard for podiatrists if properly recorded and documented in the patients' records. Also, if no follow-up care is necessary, it is not negligence or incompetence to fail to notify nurses that no follow-up care is required. Therefore, the Board finds that Dr. Baer is not guilty as to the Eleventh Count.

#### Twelfth, Thirteenth, Fourteenth and Fifteenth Counts

These counts relate to Dr. Baer's treatment of four patients at the Rockville Memorial Nursing Home; Antoinette Zappola, Margaret Schlaefler, Marion Kearns and Mary McPartland. The charges include indicating treatment in medical records which was in fact not done, billing medicare for treatments not done, and indicating on a Health Insurance Claim form that Marion Kearns was a diabetic when she was not.

After weighing the credibility of the evidence, the Board finds Dr. Baer not guilty of the Twelfth, Thirteenth, Fourteenth and Fifteenth Counts.

ORDER

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

1. The license of the Respondent, Marc Baer, to practice podiatry in Connecticut be suspended for a period of thirty days, said period to commence at 9:00 a.m. on Monday, April 30, 1990, and to end at 9:00 a.m. on Wednesday, May 30, 1990. Dr. Baer is ordered to send a certified letter to the Department of Health Services, Division of Medical Quality Assurance, Attn. Celia B. Carroll, 150 Washington St., Hartford, CT. 06106 during the week beginning April 30, 1990 to inform the Department that he has begun the suspension period.

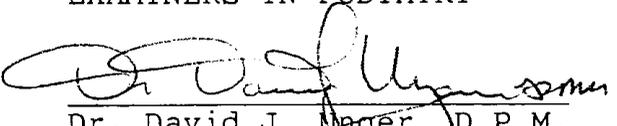
2. The Respondent, Marc Baer shall pay a fine of five thousand dollars (\$5,000.00). This civil fine is assessed on the basis of five hundred dollars for each count violated by Dr. Baer.

3. Dr. Baer is prohibited from taking x-rays in his office effective at 9:00 a.m. on Monday, April 30, 1990, until he presents evidence of the fact that he has taken thirty (30) hours of additional medical education in radiologic technique, as approved by the Board prior to taking the course.

In determining an appropriate order in this case, the Board considered the fact that this is the first time Dr. Baer has been before the Board.

CONNECTICUT BOARD OF  
EXAMINERS IN PODIATRY

March 8, 1990  
Date

  
Dr. David J. Unger, D.P.M.  
Chairman