

THE BOARD OF EXAMINERS

P00327

IN PODIATRY

In the Matter of: Stephen M. Donis, D.P.M.

The Connecticut Board of Examiners in Podiatry was presented by the Department of Health Services with a Statement of Charges brought against Stephen M. Donis, D.P.M., the Respondent, dated 7 September 1984. The Statement of Charges alleged violation of Conn. Gen. Stat. § 20-59 committed by the Respondent during March and April of 1983.

A Notice of Hearing, dated 7 September 1984, was issued to the Respondent. The Department's Statement of Charges was attached to the Notice. Pursuant to the Notice, a hearing was held on 26 September 1984 at the offices of the State of Connecticut's Department of Health Services, 150 Washington Street, Hartford. The matter was continued, and a second and final day of hearings took place on 28 November 1984, also at 150 Washington Street.

The Respondent was represented by counsel and had full opportunity to present evidence and cross-examine witnesses.

All members of the Board involved in this decision attest that they have read and reviewed all transcripts of the proceedings and all evidence submitted. The decision is based entirely on the record presented and the specialized professional knowledge of the members of the Board in evaluating the evidence.

Findings of Fact

1. Stephen M. Donis, D.P.M., was at all pertinent times licensed to practice podiatry by the State of Connecticut, Department of Health Services. Hearing Transcript ("Hrg. Tr.") at 299.
2. Pursuant to Conn. Gen. Stat. § 4-182(c) the Respondent was provided full opportunity prior to the institution of agency action to show compliance with all the terms for the retention of his license. Department Exhibit ("Dept. Ex.") A.
3. In the spring of 1983, Kathryn Anderson visited the Respondent's Stamford office, at which time the Respondent examined her feet and took two x-rays of each foot. Hrg. Tr. at 9, 301.
4. In the spring of 1983, Kathryn Anderson returned to the Respondent's office for a second visit, at which time the Respondent proposed to perform an extensor tenotomy on each of her toes. Hrg. Tr. at 10, 21, 318-19 and Dept. Ex. F.
5. Stedman's Medical Dictionary, 17th revised Edition, at 1189, defines "tenotomy" as "the surgical division of a tendon for the relief of a deformity caused by congenital or acquired shortening of a muscle." According to Dorland's Illustrated Medical Dictionary, 23rd ed., at 486, an "extensor" is "any muscle that extends a joint." An "extensor tenotomy," therefore, is a procedure in which the tendon that controls the lifting of any joint is cut.
6. The Respondent proposed to perform the extensor

tenotomies on Kathryn Anderson's feet at that second visit. Hrg. Tr. at 10, 19.

7. The Respondent performed no blood work or other laboratory tests on Kathryn Anderson at either of her two visits to office.

8. Kathryn Anderson declined to have the Respondent perform the surgery at her second visit because she wished to discuss the proposed procedure, and the quoted price of the procedure, with her parents. Hrg. Tr. at 11, 301-303.

9. The Respondent never performed the extensor tenotomy on any of Kathryn Anderson's toes, or any other treatment on any part of her feet. Hrg. Tr. at 11, 303.

10. In March of 1983 Margaret Figa visited the Respondent's Stamford office, at which time the Respondent examined her feet and took x-rays of them. Hrg. Tr. at 154-155.

11. The Respondent took no blood sample at this time, and his examination on this visit was limited to an evaluation of Margaret Figa's feet. Hrg. Tr. at 155, 328.

12. Margaret Figa initially sought the services of a podiatrist primarily to obtain treatment for the fourth toe of the right foot. Hrg. Tr. at 154-155, 157, 326.

13. Margaret Figa paid a second visit to the Respondent's office in March of 1983, at which time the Respondent proposed

multiple bone procedures for a complaint in a single toe. Hrg. Tr. at 157, Dept. Ex. G.

14. Margaret Figa declined to have the Respondent perform the procedures because of the price quoted by the Respondent for the procedures. Hrg. Tr. at 162.

15. The Respondent never performed the proposed procedure or any other treatment, on Margaret Figa's feet. Hrg. Tr. at 164-165.

16. During March and April of 1983, Maria Mercado paid three visits to the Respondent's office. Hrg. Tr. at 308.

17. In the course of these visits the Respondent: (1) examined Maria Mercado's feet; (2) took x-rays of her feet; and (3) removed some calluses from the balls of her feet. Hrg. Tr. at 253-308.

18. On the second visit the Respondent performed four extensor tenotomies on Maria Mercado's toes. Hrg. Tr. at 308, 343-350.

19. The only laboratory work that the Respondent performed on Maria Mercado prior to operating on her was a "casual blood glucose" test. Hrg. Tr. at 370.

20. In the days immediately following the Respondent's performance of the extensor tenotomies, Maria Mercado experienced post-operative trauma, as manifested by discoloration and swelling in the foot on which the Respondent had operated. Hrg. Tr. at 388-390.

59; 63-64.

21. The Respondent provided Maria Mercado with no written instructions for the post-operative care of her foot, despite the fact that Maria Mercado's command and comprehension of English is limited. Hrg. Tr. at 54-56.

22. The Respondent verbally instructed Maria Mercado to soak her foot and to perform certain toe exercises. Hrg. Tr. at 352-353.

23. The Respondent did not attempt to contact Maria Mercado when she failed to keep a post-operative appointment. Hrg. Tr. at 41, 309, 355.

Discussion and Conclusions

First Count

In the first count the Respondent is charged with pre-
scribing "inappropriate surgery" for Kathryn Anderson.

There exists a preliminary issue regarding the dates of Kathryn Anderson's visits to the Respondent's office. Both the first and second counts of the Statement of Charges allege that the Respondent committed violations of Conn. Gen. Stat. § 20-59 in March of 1983, which is the date given by the Department for Kathryn Anderson's visits to the Respondent's office. On both di-
rect examination and cross-examination, however, Kathryn Anderson

testified that she visited the Respondent's office in May of 1983 and that the events giving rise to the first and second counts occurred in May. Hrg. Tr. at 9, 12. Other evidence indicates that the Respondent saw Kathryn Anderson in his office on two dates in March of 1983. Dept. Ex. C and F.

Because of this inconsistency in the evidence, no explanation regarding the month in which Kathryn Anderson sought the Respondent's professional services has been made. However, the Statement of Charges provided the Respondent with adequate notice of the events giving rise to the first and second counts, and the exact date of Kathryn Anderson's visits to the Respondent's office are not critical to the conclusions and Order.

The evidence presented indicates that Kathryn Anderson suffered from a contracture of the last joint of several toes, a condition known as mallet toe(s). The Respondent identified Kathryn Anderson's problem as digital contractures. Dept. Ex. F. Other evidence, however, clearly indicates that she suffered from the condition known as mallet toe(s).

The Respondent inappropriately prescribed a certain type of surgery to treat Kathryn Anderson's major complaint, mallet toe(s). None of the evidence presented indicates that the Respondent offered Kathryn Anderson any more conservative methods of treating her condition, which was not urgent. Such other methods might

have included: (1) prescribing more comfortable shoes for the patient; and/or (2) advising her to stay off her feet for a sufficient period of time to allow the condition to correct itself. Finally, it is not at all clear that the Respondent's proposed plan of performing extensor tenotomies to correct the patient's condition constituted the appropriate surgery, if more conservative methods of treatment had failed, and surgery had proved to be the best alternative.

The Respondent's diagnosis of, and proposed treatment for Kathryn Anderson constitutes "illegal or incompetent or negligent conduct in the practice of podiatry" within the meaning of Conn. Gen. Stat. § 20-59(4).

Second Count

The Respondent is charged with having exerted undue influence over Kathryn Anderson to persuade her to consent to have surgery performed immediately. There is insufficient evidence in the record to support this charge.

Third Count

In the third count the Respondent is charged with prescribing "extensive unnecessary and/or inappropriate surgery" for Margaret Figa. The evidence presented indicates that Margaret Figa suffered either from a contracture of the distal interphalangeal joint of the fourth toe on the right foot, (i.e., a mallet toe), or

from an enlargement of the middle phalanx. The Respondent's plan was to perform multiple bone procedures. See Ex. G. This proposed treatment was inappropriate for Margaret Figa's primary complaint. The evidence presented indicates that the proper diagnosis of Margaret Figa's condition was mallet toe, and the correct treatment if surgery was required, would have been the performance of a digital arthroplasty (i.e., the removal or remodeling of the joint) on the fourth toe of her right foot. To propose multiple bone procedures to correct a problem in one toe constitutes an overutilization of surgery proposed by the Respondent.

The Respondent's proposed treatment for Margaret Figa constitutes "illegal or incompetent or negligent conduct in the practice of podiatry" within the meaning of Conn. Gen. Stat. § 20-59(4).

Fourth Count

In the fourth count the Respondent is charged with prescribing "extensive unnecessary and/or inappropriate surgery" for his patient Kathleen Varnhold. There is insufficient evidence in the record to support this charge.

Fifth Count

In the fifth count the Respondent is charged with having attempted to exert undue influence over his patient Kathleen Varnhold to have surgery performed immediately. The record contain

insufficient evidence to support this charge.

Sixth Count

In the sixth count the Respondent is charged with performing inappropriate surgery for his patient Maria Mercado. Because of Maria Mercado's apparent limited comprehension and command of English, the testimony and other evidence make it difficult to determine what her complaint was at the time she was treated by the Respondent. However, the Respondent testified that he performed four extensor tenotomies on one of her feet. Hrg. Tr. at 308. The Respondent's treatment constitutes inappropriate surgery because the Respondent performed this surgery without conforming to accepted standards for pre-surgical examinations. The Respondent failed to perform adequate laboratory work on Maria Mercado before operating on her feet. He did no circulatory testing of the patient, and apparently did not even take the patient's pulse. His blood work was limited to performing a "casual blood glucose" test, Hrg. Tr. at 370. The Respondent did not do a complete blood count on Maria Mercado, or measure either the patient's bleeding time or clotting time. He neglected to perform a urinalysis to verify that the patient suffered from no urinary tract infections that would impede healing in the area of the wound. All of these tests are routinely performed by podiatrists whose care conforms to accepted standards and the Respondent's failure to do these tests on Maria Mercado

made the performance of surgery on her feet completely inappropriate.

The Respondent has argued that extensor tenotomies of the type that he performed on Maria Mercado constitute "relatively atraumatic" surgery, Hrg. Tr. at 366, and that extensive pre-operative laboratory tests of the type described above were therefore unnecessary. Hrg. Tr. at 328-29; 365-66; 373-74. The Board rejects the Respondent's argument. Extensor tenotomies constitute invasive surgery, and any invasive surgery mandates, at a minimum, the performance of all the tests described above. In the absence of such laboratory tests and a more thorough pre-operative examination, the Respondent's performance of surgery on Maria Mercado constitutes "inappropriate surgery," and the negligent practice of podiatry within the meaning of Conn. Gen. Stat. § 20-59(4).

Seventh Count

In the seventh count the Respondent is accused of charging Maria Mercado "for four operations when he had performed less than four," There is no evidence in the record to support this charge.

ORDER

First Count

Pursuant to its authority under Conn. Gen. Stat. § 19a-17(6), the Board of Examiners in Podiatry hereby orders the Respondent to pay a civil penalty of \$500 for violating Conn. Gen. Stat.

§ 20-59(4) by prescribing inappropriate surgery for Kathryn Ander

Second Count

The Board of Examiners in Podiatry hereby dismisses this charge against the Respondent.

Third Count

Pursuant to its authority under Conn. Gen. Stat. § 19a-17(6), the Board of Examiners in Podiatry hereby orders the Respondent to pay a civil penalty of \$500 for violating Conn. Gen. Stat. § 20-59(4) by prescribing inappropriate surgery for Margaret Figa.

Fourth Count

The Board of Examiners in Podiatry hereby dismisses this charge against the Respondent.

Fifth Count

The Board of Examiners in Podiatry hereby dismisses this charge against the Respondent.

Sixth Count

Pursuant to its authority under Conn. Gen. Stat. § 19a-17(6), the Board of Examiners in Podiatry hereby orders the Respondent to pay a civil penalty of \$1,000 for violating Conn. Stat. § 20-59(4) by performing inappropriate surgery on Maria Mercado.

Seventh Count

The Board of Examiners in Podiatry hereby dismisses the charge against the Respondent.

Further Order

As a further consequence of the Respondent's violation of Conn. Gen. Stat. § 20-59(4), the Board of Examiners in Podiatry pursuant to its authority under Conn. Gen. Stat. § 19a-17(2), hereby suspends the Respondent's license to practice podiatry in the State of Connecticut for a period of ninety days, said period to begin on the first day of August, 1985.

June 24, 1985
Date

Irving Freedman, D.P.M.
Irving Freedman, D.P.M.
Chairman
Connecticut Board of
Examiners in Podiatry

CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

In re: Stephen M. Donis, D.P.M.
License No. P-327

NOTICE TO COMPLY

The Decision regarding Stephen M. Donis, D.P.M., by the Board of Examiners in Podiatry, dated June 24, 1985, was stayed until the determination of the appeal by the Court. The appeal was decided in June 1988, 207 Conn. 674, and the Board hereby gives Notice to Stephen M. Donis, D.P.M. that its decision of June 24, 1985 becomes effective fifteen (15) days from the mailing of this Notice. That decision dated June 24, 1985 ordered the following:

1. That Respondent is assessed a civil fine of \$2,000.00. (Note: Added to this fine will be interest from August 1, 1985 as agreed.) This penalty to be paid to:

Treasurer, State of Connecticut
Department of Health Services
Public Health Hearing Office
150 Washington Street
Hartford, Connecticut 06106

LAW OFFICES

FUREY, DONOVAN, EDDY, KOCSIS, TRACY & DALY, P. C.

CHARLES L. FUREY
THEODORE M. DONOVAN
WILLIAM J. EDDY
LOUIS P. KOCSIS
WILLIAM J. TRACY, JR.
MICHAEL C. DALY
TIMOTHY W. FUREY
F. PATRICK O'SULLIVAN*

43 BELLEVUE AVENUE
P. O. BOX 670
BRISTOL, CONNECTICUT 06010-0670
(203) 589-4343

October 20, 1988

*ALSO ADMITTED IN MASS.

Treasurer, State of Connecticut
Department of Health Services
Public Health Hearing Office
150 Washington Street
Hartford, CT 06106

RECEIVED
DEPARTMENT OF HEALTH SERVICES

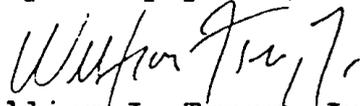
OCT 26 1988
HEARINGS & INVESTIGATIONS
DIVISION OF MEDICAL
QUALITY ASSURANCE

Re: Stephen M. Donis, D.P.M.
License No. P-327

Gentlemen:

In accordance with the attached Notice to Comply, enclosed please find a check in the amount of \$2,391.73 in payment of the fine.

Very truly yours,



William J. Tracy, Jr.

WJT/jb
Enc.

cc: Stephen Donis
David Unger, D.P.M., Chairman
Conn. Board of Examiners in Podiatry
Celia Bumstead Carroll, Health Board Liaison
Department of Health Services



BRISTOL SAVINGS BANK

BRISTOL, CONNECTICUT 06010

296049-01-179

DATE 10/20/88

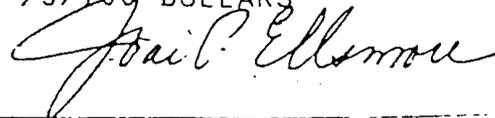
No. 296049

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PAY TO THE ORDER OF TREASURER STATE OF CONNECTICUT \$ 2,391.73

***TWO THOUSAND THREE HUNDRED NINETY ONE AND 73/100 DOLLARS

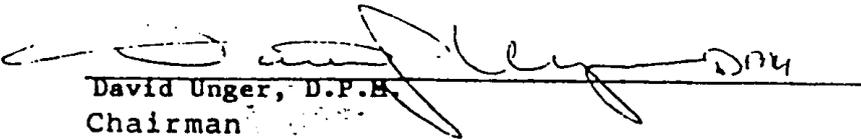
STEPHAN DONIS



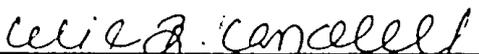
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2. That the Respondent's license to practice podiatry in the State of Connecticut be suspended for a period of ninety (90) days.

CONNECTICUT BOARD OF EXAMINERS
IN PODIATRY


David Unger, D.P.M.
Chairman

Date of mailing of this
decision to the Respondent
September 20, 1988.


Celia B. Carroll, Liaison
to the Connecticut Board
of Examiners in Podiatry



STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

10 February 1989

Stephen M. Donis, D.P.M.
833 Summer Street
Stamford, CT 06901

Dear Dr. Donis:

Pursuant to your notice to comply dated 20 September 1988, you have successfully fulfilled all the terms of the order.

Therefore, enclosed is your license renewal.

Should you have any questions I can be reached at the below listed number.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Linda Hannon", written over a horizontal line.

Linda Hannon, Paralegal
Acting Board Liaison

LH/df
3982Q/32

cc: David Pavis, Shief
Celia Carroll, Board Liaison