

**BEFORE THE BOARD OF PODIATRY EXAMINERS
OF THE STATE OF IOWA**

IN THE MATTER OF

CHARLES D. JOINER, DPM,

POD 01-008 and 02-005

EMERGENCY ADJUDICATIVE ORDER

COMES NOW the Iowa Board of Podiatry Examiners, on this 5th day of October, 2005, and finds it was presented with evidence which establishes that Respondent's continued practice of podiatry constitutes an immediate danger to the public health, safety, and welfare. The Board has conducted a full investigation of this matter. A summary of the evidence obtained in that investigation is as follows:

FINDINGS OF FACT

1. Respondent was issued license number 193-00652 to practice podiatry in the State of Iowa on September 16, 1997. The license is current through June 30, 2006.
2. On June 27, 2003, the Board filed a Statement of Charges against Respondent alleging that Respondent was professionally incompetent in his treatment of several patients and that he had failed to comply with a subpoena issued by the Board.
3. On May 10, 2004, Respondent and the Board entered into a Settlement Agreement and Final Order, in which Respondent agreed his license would be placed

on probation for four years, submit to a number of requirements, which included submission to a comprehensive competency evaluation at CPEP, or through a program approved by the Board, within sixty days of the date of the order.

4. Under this agreement, Respondent was to submit to evaluation by July 9, 2004. That deadline was extended to August 1, 2004; and then extended to August 31, 2004.

5. On October 6, 2004, the Board filed a Statement of Charges against Respondent for failure to comply with an order of the Board.

6. Following a contested case hearing, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order on November 23, 2004, in which Respondent was cited and warned for his failure to comply with the Board order of May 10, 2004, and ordered to comply with that order.

7. Respondent submitted to evaluation at CPEP from November 29-30, 2004. CPEP's evaluation report identified extensive deficiencies in Respondent's podiatric practice. CPEP recommended Respondent be retrained in a residency program because he "did not demonstrate the ability to remain in independent practice while attempting to remediate his clinical skills." CPEP also recommended Respondent undergo a neuropsychological evaluation before undergoing remediation, as results from a cognitive function screening test performed by CPEP raised concerns suggesting the need for such an evaluation.

8. Respondent voluntarily underwent a neuropsychological evaluation at the University of Iowa Hospitals and Clinics (UIHC) on March 10, 2005. The report from that evaluation indicated the evaluation results "are invalid, due to [Respondent's] poor effort during the testing." It was recommended Respondent return for re-evaluation, further undergo a neurological evaluation and a brain MRI, and limit his practice until he

could be fully evaluated.

9. On April 8, 2005, the Board issued a Confidential Order for Evaluation requiring Respondent to comply with the recommendations from the UIHC for further evaluation, and to complete that evaluation within fifteen working days of the date of the order.

10. In a separate letter to Respondent, the Board advised Respondent about the Order for Evaluation and further requested that within ten days Respondent provide the Board with documentation “that you have made arrangements to complete a residency program and a detailed plan to close your practice.” In a letter to the Board dated May 4, 2005, Respondent subsequently contacted the Board to advise he was not currently practicing podiatry because of “health related reasons,” that he planned to have an associate operate his practice, and that he would not return to UIHC for re-evaluation because of his current health problems. Respondent requested his license be placed on inactive status or be voluntarily suspended.

11. In a letter dated May 13, 2005, counsel for the Board provided a voluntary surrender agreement to Respondent and his counsel, and asked that it be signed and returned by May 27, 2005. Respondent has not responded to that letter.

12. The Board found probable cause to file a Statement of Charges on July 8, 2005, and set a hearing for October 5, 2005.

13. On August 10, 2005, Respondent filed a motion for continuance, which was resisted by the State. An Administrative Law Judge (ALJ) issued an order on August 23, 2005, denying Respondent’s request and concluding a continuance would only be granted “if the Respondent provides the Board with a written statement, signed by him, stating that he will voluntarily agree not to practice podiatry in the state of Iowa until the Board issues its final order resolving the pending Statement of Charges. ” The

statement was to acknowledge the agreement is a matter of public record.

14. Respondent did not sign the required statement.

15. On October 3, 2005, Respondent filed a second motion for continuance, alleging, *inter alia*, that Respondent is not mentally competent to serve as a witness at the hearing. He attached the affidavit of his treating physician to support this assertion.

16. The motion for continuance was resisted by the State. An ALJ issued an order on October 4, 2005, which concluded a continuance was warranted because “Respondent’s apparent mental incompetence to participate in the hearing, as attested to by his treating physician, raises due process concerns and constitutes an extenuating and extraordinary circumstance justifying a continuance of the hearing.”

17. The affidavit of Respondent’s treating physician submitted by Respondent states Respondent is suffering from “significant cognitive dysfunction” which is currently under evaluation. As a result, Respondent is suffering from the following conditions:

- a. Short-term memory problems;
- b. Difficulties recalling specific details about events that have happened in the past;
- c. Anxiety; and
- d. Difficulty dealing with stressful/emotional situations.

18. Respondent has not, as of the date of this Order, submitted a written agreement not to practice podiatry pending resolution of the current Statement of Charges. Respondent has not indicated any willingness to address the Board’s concern that he maintains a current, active license to practice podiatry, and therefore is able to lawfully practice at any time he deems appropriate.

CONCLUSIONS OF LAW

19. The facts set forth above establish that Respondent appears to have failed to comply with a decision and order of the Board imposing licensee discipline, in violation of Iowa Code section 272C.3(2)(a) (2005), and 645 IAC 220.212(1)(b).

20. The facts set forth above establish that Respondent appears to be professionally incompetent, in violation of 645 IAC 224.2(2)(a) - (d).

21. The facts set forth above establish that Respondent appears to be unable to practice medicine with reasonable skill and safety because of illness, a physical condition, and/or a mental condition, in violation of 645 IAC 224.2(2)(e).

22. The Board concludes on the basis of the facts set forth above that this investigation has been sufficient to ensure the Board is proceeding on the basis of reliable information received from evaluating programs and from Respondent himself.

23. The facts set forth above establish that Respondent's continued practice of podiatry would pose an immediate danger to the public health, safety, or welfare. Respondent's competency problems, his physical and mental health conditions, and his ongoing failure to comply with Board orders raise global concerns regarding his ability to practice that cannot be addressed through any means other than full suspension of his license. The Board believes patients may be harmed if Respondent is allowed to engage in the practice of podiatry before the Board reaches a final resolution of the formal charges pending against him.

24. The Board finds there are no monitoring requirements or other interim safeguards that would be sufficient to protect the public health, safety, or welfare until this case is finally resolved.

ORDER

IT IS HEREBY ORDERED, in accordance with Iowa Code Section 17A.18A (2005), that Respondent be indefinitely suspended from the practice of podiatry pending further order of the Board.

A hearing on this Emergency Adjudicative Order and Statement of Charges, which were filed on July 8, 2005, shall be held on Thursday, November 3, 2005. The

hearing will begin at 9:00 a.m. and will be held at the Board conference room, 5th Floor,
Lucas State Office Building, Des Moines, IA 50319.

This Emergency Adjudicative Order is approved by the board on October 5, 2005.