STATE OF IOWA
BEFORE THE IOWA BOARD OF PODIATRY EXAMINERS

IN THE MATTER OF:	) CASE NO. POD 01-008,02-005
	) DIA NO. 05DPHPE001
CHARLES D. JOINER, DPM	)
License No. 193 00652	) FINDINGS OF FACT,
	) CONCLUSIONS OF LAW,
RESPONDENT	) DECISION AND ORDER

Pending Statement of Charges

On July 8, 2005, the Iowa Board of Podiatry Examiners (Board) filed a Statement of Charges against Charles D. Joiner, DPM, (Respondent) alleging three counts:

> Count I: Failure 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 Iowa Administrative Code (IAC) 220.212(1)(b)[1].
>
> Count II: Professional incompetency, in violation of 645 IAC 224.2(2)(a)-(d).
>
> Count III: Inability to practice with reasonable skill and safety because of illness, a physical condition, and/or a mental condition, in violation of 645 IAC 224.2(e).

On July 13, 2005, a Notice of Hearing was issued scheduling the hearing for October 5, 2005.

First Motion for Continuance

On August 10, 2005, Respondent's attorney filed a Motion for Continuance, on the grounds that he was scheduled for surgery on August 11, 2005 and anticipated a several week recovery. The state responded that the continuance request should be denied unless Respondent submitted a written agreement not to practice podiatry until the Board issued its final order resolving the pending Statement of Charges. On August 23, 2005, an administrative law judge issued an Order which provided that a continuance would only be granted upon receipt of Respondent's signed, written agreement not to practice pending receipt of the

[1] The citation to the Iowa Administrative Code was incorrect. This rule has been renumbered and the correct citation is 645 IAC 224.2(20).

Board's final order. Respondent did not submit a written agreement not to practice.

Supplemental Motion for Continuance
Emergency Adjudicative Order

On October 3, 2005, Respondent's attorney filed a Supplemental Motion to Continue, stating that he continued in recovery from his surgery and further stating that Respondent suffered from a mental condition that precluded him from being a competent witness and effectively participating in his own defense. Specifically, Respondent's attorney asserted that in December 2004, Respondent suffered a medical and/or psychiatric situation that resulted in the following conditions: severe cognitive dysfunction, short-term memory problems, difficulties recalling specific details about events that have occurred in the past, anxiety, and difficulty dealing with stressful/emotional situations. These assertions were corroborated by an affidavit from Respondent's treating internist. The state responded, resisting any continuance unless Respondent filed a written agreement not to practice in accordance with the prior Order.

On October 4, 2005, an administrative law judge issued an Order Granting Respondent's Motion for Continuance, but recommending that the Board consider issuing an emergency adjudicative order suspending Respondent's license to practice podiatry. The Board met on October 5, 2005, at the time originally scheduled for hearing. Respondent's attorney, David Brown, and the assistant attorney general, Theresa O'Connell Weeg, both appeared before the Board. The assistant attorney general urged the Board to consider issuing an Emergency Adjudicative Order suspending Respondent's license and presented a draft order for the Board's consideration. Respondent's attorney resisted, arguing there was no emergency or threat to the public because Respondent was not currently practicing podiatry. After considering the parties' arguments, the Board issued an Emergency Adjudicative Order suspending Respondent's podiatry license. The Board scheduled a hearing on both the Statement of Charges and the Emergency Adjudicative Order for November 3, 2005. Respondent did not file a further Motion to Continue.

November 3, 2005 Hearing

The hearing was held on November 3, 2005 at 9:00 a.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. Respondent did not appear but was represented by

attorney David Brown. Theresa O'Connell Weeg, Assistant Attorney General, represented the state of Iowa.

The following Board members served as the presiding officers for the hearing: Matthew Wilber, DPM, Board Chair; Rickey Salocker, DPM; Robert Yoho, DPM; Eric Jensen, DPM; Jill Scholz, DPM; Pat Hastings and Ethel Campbell, public members. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), for deliberations. The Board was unable to complete deliberations in the time available and agreed to reconvene by telephone on November 9, 2005 at 7:00 a.m.

After the record was closed on November 3, 2005, Respondent's attorney submitted an Application to Reopen and Supplement the Record and attached Exhibit A, a medical report from Eric R. Barlow, M.D. The state filed a Response on November 8, 2005. The Board reconvened in closed session for deliberations on November 9, 2005. The Board granted Respondent's request to reopen the record and admitted Respondent Exhibit A. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes all of the above-referenced pleadings, motions, orders, and documents and the following exhibits:

State Exhibit 1:	Statement of Charges, 6/27/03
State Exhibit 2:	Settlement Agreement and Final Order, 5/10/04
State Exhibit 3:	Statement of Charges, 10/6/04
State Exhibit 4:	Findings of Fact, Conclusions of Law, Decision and Order, 11/23/04
State Exhibit 5:	Statement of Charges, 7/8/05
State Exhibit 6:	Notice of Hearing, 7/8/05
State Exhibit 7:	Letter dated 2/2/05 (CPEP to Respondent) with attached CPEP Assessment Report
State Exhibit 8:	Letter dated 1/27/05 (CPEP to Respondent) and attached letter dated 1/25/05 (Respondent to CPEP)

State Exhibit 9: Letter dated 2/11/05 (Board to Respondent)
State Exhibit 10: Letter dated 2/14/05 (CPEP to Respondent) with Addendum
State Exhibit 11: UIHC Evaluation Report, 3/23/05
State Exhibit 12: Confidential Order for Evaluation, 4/8/05
State Exhibit 13: Letter dated 4/21/05 (Board to Respondent)
State Exhibit 14: Letter dated 5/4/05 (Respondent to Board
State Exhibit 15: Letter dated 5/13/05 (Weeg to Brown)

Respondent Exhibit A: Medical Report of Eric R. Barlow, M.D. dated 11/2/05

FINDINGS OF FACT

1. Respondent was issued license number 193-00652 to practice podiatry in the state of Iowa on September 16, 1997. Respondent's license is on probation and is current through June 30, 2006. At times relevant to this decision, Respondent has had a solo podiatry practice in West Des Moines, Iowa and a satellite office in Oskaloosa, Iowa. He also provided podiatry services in nursing homes. (State Exhibits 4, 5)

2. On June 27, 2003, the Board charged Respondent with professional incompetency in his care and treatment of at least twelve patients, based on a report submitted by a peer review committee consisting of three Iowa-licensed podiatrists. The allegations in the Statement of Charges included failure to maintain adequate patient records, failure to properly diagnose patient conditions, failure to appropriately treat patient conditions, and failure to provide adequate operative and post-operative care.

On May 10, 2004, Respondent and the Board entered into a Settlement Agreement and Final Order resolving the issues presented by the Statement of Charges. The Settlement Agreement and Final Order placed Respondent's podiatry license on probation for four (4) years, subject to probationary terms. The probationary terms included, but were not limited to, timely completion of a comprehensive evaluation and compliance with a Board-approved practice monitoring plan. (State Exhibits 1,2,4)

3. The Settlement Agreement and Final Order required Respondent to complete the comprehensive evaluation through the

Center for Personalized Education for Physicians Program (CPEP) in Denver, Colorado or through a program approved by the Board, within sixty (60) days of the Board's approval of the Settlement Agreement and Final Order. The deadline for completion of the evaluation was July 9, 2004. (State Exhibit 2)

Respondent was subsequently granted two extensions to complete the evaluation. He was given until August 31, 2004 to make arrangements for the CPEP evaluation and until September 30, 2004 to complete the evaluation. The Board denied Respondent's request to allow his podiatrist monitor to serve as his evaluator. (State Exhibit 4)

4. On October 6, 2004, the Board filed a second Statement of Charges against Respondent, charging him with failure to comply with the comprehensive evaluation requirement. At a contested case hearing on November 15, 2004, Respondent told the Board that he was scheduled for the CPEP evaluation beginning on November 29, 2004. Following the hearing, the Board cited and warned Respondent for not complying with the May 10, 2004 Settlement Agreement and ordered him to complete the evaluation as scheduled. (State Exhibits 3, 4)

5. CPEP evaluated Respondent on November 29-30, 2004. CPEP's assessment process included clinical interviews by three board-certified podiatrists. The interviews were based on actual patient charts submitted by Respondent as well as hypothetical case discussions with simulated patients representing clinical cases typically seen in podiatry practice. Respondent was also given a multiple-choice examination in podiatry. The assessment evaluated Respondent's medical knowledge, clinical reasoning, application of knowledge to practice, documentation, and communication skills. In addition, Respondent was given a cognitive function screen. He scored at or below the 4th percentile, and the consultant stated that this result could not be attributed solely to English being Respondent's second language.[2]

CPEP issued a detailed Assessment Report describing the assessment process and its findings. In summary, CPEP concluded that Respondent's podiatry knowledge is poor, his judgment and clinical reasoning skills are unacceptable, his documentation is inadequate, his communication skills are adequate, and his

[2] Respondent was born in Gambia, Africa and emigrated to the United States in 1980. Respondent attended the College of Podiatric Medicine and Surgery at the University of Osteopathic Medicine and Health Sciences in Des Moines, Iowa, receiving his D.P.M. degree in 1995. (State Exhibits 7, 11)

cognitive function screen suggests the need for neuropsychological evaluation. No health concerns were identified that impact Respondent's ability to practice.

CPEP recommended that 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 recommended Respondent undergo a neuropsychological evaluation before undergoing remediation. (State Exhibit 7)

6. Respondent replied to CPEP's Assessment Report in a detailed letter dated January 29, 2005. In his letter, Respondent challenged the fairness and accuracy of CPEP's Assessment and its Report. In part, Respondent questioned the qualifications of CPEP and its Associate Medical Director, Elizabeth S. Grace, M.D., to accurately assess him because the program had no prior experience evaluating podiatrists. Respondent also alleged that one of the clinical interviewers made several racist and unprofessional comments to him during the interview. Respondent challenged the legitimacy and accuracy of CPEP's cognitive function screening test to evaluate an African who has different cultural values. Finally, Respondent contended that CPEP staff deliberately "obliterated" his answers on the first computerized multiple choice knowledge test, thereby requiring him to take the test a second time. (State Exhibits 7, 8)

7. In response to Respondent's January 29, 2005 letter, CPEP issued an Addendum to its original Assessment Report. In a cover letter to Respondent dated February 14, 2005, CPEP told Respondent that it steadfastly remained behind the evaluation and believed that his criticisms and allegations were unfounded. CPEP acknowledged that Respondent was the first podiatrist assessed at CPEP but noted that its evaluation process had been used successfully for osteopathic and allopathic physicians, nurse midwives, and physician assistants in 36 specialties over a period of fifteen years.

Dr. Grace was present for all of the clinical interviews, and she corroborated that the assessment processes were conducted in accordance with CPEP protocols. CPEP acknowledged that one of its consultants asked Respondent if an African American patient was a friend of his. Dr. Grace apologized to Respondent for this question after the interview. Dr. Grace denied that the consultant made any of the additional statements alleged in Respondent's letter. CPEP executive staff discussed the impact

of this question on the interview and determined that it did not affect the interview process or outcome. CPEP acknowledged that CPEP staff lost Respondent's answers to the multiple-choice examination but asserted that it was an inadvertent error. The Board accepts this explanation. CPEP offered Respondent the option of retaking the examination or, if he chose not to retake the examination, CPEP would explain its error in the assessment report. Respondent chose to retake the examination. (State Exhibit 10)

8. Respondent voluntarily underwent a neuropsychological evaluation at the University of Iowa Hospitals and Clinics (UIHC) on March 10, 2005. During the evaluation, Respondent reported that he had suffered a stroke in mid-December 2004 while traveling in Gambia. He reported symptoms of acute aphasia, loss of vision in his right eye, diplopia, numbness in his right jaw, and weakness in his right arm and both legs. Respondent received medical care when he returned to Iowa, including speech, occupational, and physical therapy. He reported that he continued to have problems with memory, attention, writing, arithmetic, comprehension of speech, multitasking, diplopia, and weakness in his arm.

Respondent's medical records did not include any evaluation by a neurologist. Respondent had a CT scan on February 1, 2005 that revealed no evidence of acute damage or recent changes. An earlier brain MRI, administered on May 26, 2000 to evaluate the cause of a possible syncopal episode, revealed "a few nonspecific areas of gliosis or chronic macrovascular ischemic chance in the subcortical and paraventricular white matter."

Both Respondent and his wife reported to UIHC staff that he curtailed his podiatry practice and was only working with longtime patients and simple procedures such as toenail clipping and callus removal. Respondent's wife had rescheduled the more complicated procedures for several months in the future, hoping that Respondent's condition would improve. Respondent had reduced his driving, and his wife was handling their checkbook

The UIHC report dated March 23, 2005 indicated that the evaluation results were invalid due to Respondent's poor effort during testing. UIHC recommended that Respondent return for re-evaluation, further neurological evaluation, and a brain MRI, and that Respondent limit his practice until he could be fully evaluated. (State Exhibit 11)

9. On April 8, 2005, the Board issued Respondent a Confidential Order for Evaluation, requiring him to comply with UIHC's recommendation for further evaluation within fifteen working days. (State Exhibit 12) To date, Respondent has not complied with the Confidential Order for Evaluation.

10. In a separate certified letter dated April 21, 2005, the Board told Respondent to provide documentation of his arrangements to complete a residency program and a detailed plan to close his practice. (State Exhibit 13) This documentation was due within ten working days.

Respondent replied on May 4, 2005, once again challenging the legitimacy of the CPEP evaluation and its recommendations. Respondent advised the Board that he is "not in practice at this time due to health related reasons." Respondent further stated that he had no intention to close down his incorporated practice but planned to have an associate operate and run his corporation. Respondent stated that at the current time he did not feel confident enough to put forth full effort on a neuropsychological re-evaluation. Respondent closed the letter by stating "[Respondent] is voluntarily requesting that effective immediately his license to practice Podiatry in the state of Iowa be placed on temporary out of status or; if equivalent, voluntary suspension be granted." (State Exhibit 14)

In response to Respondent's May 4, 2005 letter, the assistant attorney general sent Respondent's attorney a proposed stipulation order which would have placed Respondent's license on indefinite suspension and allowed him to apply for reinstatement once he complies with the recommendations of the CPEP report and the UIHC evaluation report. Respondent was asked to sign and return the stipulated order by May 27, 2005. (State Exhibit 15). Respondent did not sign and return the stipulated order.

11. On November 2, 2005, Eric R. Barlow, M.D. issued a report "to whom it may concern" stating that Respondent is presently hospitalized at Iowa Lutheran Hospital and unable to attend the meeting scheduled for November 3, 2005. Dr. Barlow further stated that Respondent has been struggling with severe medical issues since sometime last year, therefore rendering him unable to comply with previous requests from the Board. Dr. Barlow was unable to predict the duration of Respondent's present status and directed further requests to Respondent's wife. The Board

was provided this letter following the November 3, 2005 hearing. (Respondent Exhibit A)

CONCLUSIONS OF LAW

I. Emergency Adjudicative Order

Iowa Code section 17A.18A authorizes an agency to use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety or welfare requiring immediate agency action. Consistent with the requirements of Iowa Code section 17A.18A, the Board has promulgated procedures governing emergency adjudicative proceedings at 645 IAC 11.28. 645 IAC 11.28 authorizes the board to issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, if such action is necessary to prevent or avoid an immediate danger to the public health, safety, and welfare. Prior to issuing an emergency adjudicative order, the Board must, at a minimum, consider the following factors:

> a. Whether there has been sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
>
> b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
>
> c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
>
> d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, and welfare; and
>
> e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

645 IAC 11.28(2).

The preponderance of the evidence in this record raises global concerns about Respondent's current ability to safely practice any aspect of podiatry and supports the Board's decision that protection of the public health, safety and welfare required immediate suspension of his license. First, Respondent has

multiple professional competency deficiencies, as amply documented in the CPEP Assessment Report. As discussed in greater detail in section II of this Order, the Board is satisfied that the information in the CPEP assessment report is reliable. Respondent has not complied with the recommendations made by CPEP to address these competency concerns and therefore has not complied with the terms of the Settlement Agreement and Final Order establishing terms of probation.

Second, the CPEP Assessment raised urgent and serious concerns about Respondent's cognitive function. These concerns were corroborated and broadened by Respondent's statements to UIHC personnel at the time of his evaluation on March 10, 2005, by the physician's affidavit that he submitted in support of his Supplemental Motion to Continue on October 3, 2005, and by Dr. Barlow's written statement dated November 2, 2005. However, Respondent has not provided the Board with any further specific documentation of his physical or mental condition and has not complied with the Board's Confidential Evaluation Order.

The protection of the public requires prompt resolution of the pending Statement of Charges. Absent further disciplinary action by the Board, Respondent was authorized to continue his podiatry practice. While Respondent volunteered in a letter to the Board dated May 4, 2005 that he was not currently practicing podiatry, he has refused the Board's request that he submit a plan to close his practice. The Board had no guarantee that Respondent was not practicing podiatry or that Respondent would not unilaterally make the decision to return to practice. This is a real and serious concern in light of Respondent's reported mental status. Through his attorney, Respondent told the Board that he was not mentally competent to proceed to hearing on the Statement of Charges, but has ignored the Board's requests that he sign an agreement not to practice, pending resolution of the Statement of Charges. Under these circumstances, full and immediate suspension of Respondent's podiatry license was necessary to protect the public health, safety, and welfare.

II. Pending Statement of Charges

A. Failure to Comply With A Board Order

Iowa Code Section 272C.3(2)(a)(2005) provides in relevant part:

> 2. Each licensing board may impose one or more of the following as licensee discipline:

> a. Revoke a license, or suspend a license either until further order of the board or for a specified period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

Accord, 645 IAC 224.2(20).

The preponderance of the evidence established that the Respondent violated Iowa Code section 272C.3(2)(a)(2005) and 645 IAC 224.2(20) by failing to comply with the terms of the Settlement Agreement and Final Order dated May 10, 2004 and by failing to comply with the Board's Confidential Order for Evaluation issued April 8, 2005.

Pursuant to the terms of the Settlement Agreement and Final Order, Respondent agreed to submit to a comprehensive evaluation through CPEP and to promptly and timely comply with all of CPEP's recommendations. After significant delays, Respondent submitted to the comprehensive evaluation on November 29-30, 2005. CPEP made a number of recommendations, including that Respondent undergo a neuropsychological evaluation and that he complete a residency retraining program. While Respondent submitted to a neuropsychological evaluation at the University of Iowa Hospitals and Clinics (UIHC) on March 10, 2005, he failed to put forth full effort and the results of the examination were deemed invalid. UIHC recommended further evaluations. On April 8, 2005, the Board ordered Respondent to complete a neuropsychological re-evaluation, a neurological evaluation and a brain MRI within fifteen working days and to promptly provide the evaluation reports and records to the Board. To date, Respondent has not complied with CPEP's recommendation for further evaluation or with the Board's Confidential Order for Evaluation. In addition, on April 21, 2005, the Board asked Respondent, within ten working days, to provide documentation that he had made arrangements to complete a residency training program and to provide a detailed plan to close his practice. Respondent has not complied with either of these requests.

B. Professional Incompetency

645 IAC 224.2(2) provides, in relevant part:

> **645-224.2(149,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645-224.3(147,272C) when the board determines

> that the licensee is guilty of any of the following acts or offenses:
>
> ...
>
> **224.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:
>
> *a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
>
> *b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting under the same or similar circumstances.
>
> *c.* A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
>
> *d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a podiatrist in this state.

The preponderance of the evidence established that Respondent is professionally incompetent, as that term is defined in 645 IAC 224.2(2)"a"-"d." The Board is satisfied that CPEP's evaluation was thorough, accurate, and fair. CPEP is a nationally recognized program with fifteen years of experience conducting evaluations of health care professionals in approximately 36 specialties. Respondent's three clinical interviewers were all board-certified podiatrists who reached conclusions about deficiencies in Respondent's practice that were largely consistent with the earlier findings of the Board's peer review committee. The assessment report provides ample detail describing the entire evaluation process and the basis for CPEP's conclusions. The record includes Respondent's hearsay complaints about the fairness of the evaluation and CPEP's hearsay response. The Board accords greater weight and credibility to Dr. Grace's description of the evaluation process than to Respondent's description, particularly in light of Respondent's health conditions that affect his cognitive functioning and memory.

C. Inability to Practice Podiatry With Reasonable Skill and Safety

645 IAC 224.2(2)(e) provides, in relevant part:

> e. Inability to practice with reasonable skill and safety by reason of illness,...or as a result of a mental or physical condition.

The preponderance of the evidence established that Respondent is currently unable to practice podiatry with reasonable skill and safety by reason of illness or as a result of a mental or physical condition, in violation of 645 IAC 224.2(2)"e." This finding is supported by CPEP's Assessment Report, by the statements in the UIHC Report following the neuropsychological evaluation, by Respondent's correspondence, by the physician affidavit submitted by Respondent in support of his Supplemental Motion to Continue, and by the November 2, 2005 statement from Respondent's physician.

III. Sanction

The Board considered the disciplinary sanctions listed in 645 IAC 224.3 and the relevant factors outlined at 645 IAC 224.4. Specifically, the Board considered the number and severity of Respondent's prior violations, the nature and severity of the current violations, Respondent's serious health conditions affecting his mental status and cognitive functioning, and the public interest. Based on these factors, the Board has no option but to indefinitely suspend Respondent's license to practice podiatry until he can establish, by a preponderance of the evidence, that the reasons for the suspension no longer exist and that it is in the public interest for his license to be reinstated.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 193-00652 issued to Respondent Charles Joiner, DPM is hereby **INDEFINITELY SUSPENDED.**

IT IS FURTHER ORDERED that Respondent's license suspension will continue until Respondent establishes, through a reinstatement proceeding, that the basis for the suspension no longer exists, and it is in the public interest for his license to be reinstated.

FINALLY, IT IS ORDERED that the Respondent shall pay a $75.00 hearing fee and the $67.50 fee for the court reporter. The $142.50 in hearing fees and costs shall be paid within thirty (30) days of receipt of this decision. If a transcript is ordered, the cost will be charged to the party requesting it. Iowa Code section 272C.6; 645 IAC 11.23.

This findings of fact, conclusions of law, decision and order is approved by the board on November 28, 2005.

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa Administrative Procedure Act. 645 IAC 11.29.