STATE OF IOWA BEFORE THE IOWA BOARD OF PODIATRY EXAMINERS

| IN THE MATTER OF:) | CASE NO. POD 01-008,02-005 |
|--------------------------|----------------------------|
|) | DIA NO. 04DPHPE001 |
| CHARLES D. JOINER, DPM) | |
| License No. 193 00652) | FINDINGS OF FACT, |
| | CONCLUSIONS OF LAW, |
| RESPONDENT) | DECISION AND ORDER |

On October 6, 2004, the Iowa Board of Podiatry Examiners (Board) filed a Statement of Charges against Charles D. Joiner, DPM, (Respondent) alleging that he violated Iowa Code section 272C.3(2)(a)(2003) and 645 Iowa Administrative Code (IAC) $220.212(1)(b)^1$ by his failure to comply with a decision and order of the Board imposing licensee discipline.

A Notice of Hearing was issued, and the hearing was held on November 15, 2004 at 9:00 a.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. The Respondent appeared and 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 the 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 and was instructed to prepare the Board's Findings of Fact, Conclusions Law, Decision and Order, in conformance with deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, the testimony of the Respondent, and the following exhibits:

State Exhibit 1: Statement of Charges, 6/27/03

 $^{^{1}}$ The citation to the Iowa Administrative Code was incorrect. The correct citation is 645 IAC 224.2(20). The parties agreed to this correction at the hearing.

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State Exhibit 2: Settlement Agreement and Final Order,

5/10/04

State Exhibit 3: Statement of Charges, 10/6/04 State Exhibit 4: Notice of Hearing, 10/6/04

State Exhibit 5: Correspondence, dated 7/15/04 and

8/20/04 (Department of Justice to

Respondent's Attorney)

FINDINGS OF FACT

- 1. The 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. The Respondent has a solo podiatry practice in West Des Moines, Iowa and a satellite office in Oskaloosa, Iowa. He also provides podiatry services in nursing homes. (State Exhibits 1-3; Testimony of Respondent)
- 2. On June 27, 2003, the Board charged the Respondent with professional incompetency in his care and treatment of at least twelve patients. 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, the 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 the 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)
- 3. The Settlement Agreement and Final Order required the 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)

The Respondent was subsequently granted two extensions and 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 the Respondent's request to allow

his podiatrist monitor to also serve as his evaluator. (Testimony of Respondent; State Exhibit 5)

- 4. The Respondent has failed to timely comply with the comprehensive evaluation requirement of the Settlement Agreement and Final Order. The Respondent did not investigate the cost of the CPEP program until after he signed the settlement agreement. He was later surprised to learn that the evaluation would cost \$10,000 and felt that he could not afford to pay for the evaluation. With his attorney's assistance, the Respondent has made arrangements to pay the \$4,000 nonrefundable deposit for the CPEP evaluation and has applied for funds from his insurance carrier. The Respondent is scheduled to begin the CPEP evaluation on November 29, 2004. (Testimony of Respondent)
- The Settlement Agreement and Final Order also required the 5. Respondent's podiatry practice to be monitored by another licensed podiatrist approved by the Board. The monitoring podiatrist is required to review each patient chart prior to surgery to determine the need for surgery. The Respondent is currently prohibited from performing surgery without the concurrence of the monitoring podiatrist. The monitoring podiatrist is also required to conduct weekly chart review of the post-operative care provided to each surgical patient and to conduct random, weekly chart review of at least ten non-surgical The Respondent is required to ensure that the monitoring podiatrist submits quarterly reports describing the Respondent's compliance with the Board approved monitoring plan. (State Exhibit 2)

The Respondent continued his practice of podiatry after the Settlement Agreement and Final Order was approved and has obtained a practice monitor. However, the Respondent has voluntarily limited his surgery practice and has only performed procedures on ingrown toenails and warts. (Testimony of Respondent)

CONCLUSIONS OF LAW

I. Violation of a Board Order

Iowa Code Section 272C.3(2)(a)(2003) 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

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period, ...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

Accord, 645 IAC 224.2(20).

preponderance of the evidence established that Respondent violated Iowa Code section 272C.3(2)(a)(2003) and 645 IAC 224.2(20) by failing to timely comply with the comprehensive evaluation requirement of the Settlement Agreement and Final The parties agreed to the terms of the Settlement faith. The comprehensive in good evaluation requirement is a necessary first step to determine what remedial actions, if any, are necessary to ensure that the Respondent is providing patients with appropriate and effective treatment. The Respondent was responsible for financing the evaluation, scheduling and completing it, and ensuring that the Board received a prompt written report from the evaluating program. The original deadline set for completing the comprehensive evaluation was July 9, 2004, and the Respondent was granted two extensions to September 30, 2004. The Respondent has not provided the Board with a satisfactory explanation for his The failure to timely complete the failure to comply. comprehensive evaluation is a serious and substantial violation in light of the serious multiple allegations of professional incompetency that led to the Settlement Agreement.

II. Sanction

The Respondent has recently made arrangements and paid a nonrefundable deposit for the comprehensive evaluation at CPEP. He has promised the Board that he will follow through with the CPEP evaluation scheduled to begin on November 29, 2004. The Board has taken this commitment and the Respondent's financial circumstances into consideration in determining an appropriate sanction for the Respondent's violation of the Settlement Agreement and Final Order.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Charles Joiner, DPM is hereby CITED for his violation of Iowa Code section 272C.3(2)(a)(2003) and 645 IAC 224.2(20) and is WARNED that any further violations of the Settlement Agreement and Final Order will result in progressively severe sanctions.

IT IS FURTHER ORDERED that the Respondent shall complete the CPEP evaluation as it is presently scheduled. Failure to

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complete the evaluation as scheduled will result in the immediate **SUSPENSION** of the Respondent's license to practice podiatry.

IT IS FURTHER ORDERED that the Respondent shall not perform any surgical procedures until he has completed the comprehensive evaluation at CPEP and the written evaluation report has been filed with the Board.

IT IS FURTHER ORDERED that the Respondent shall fully comply with all of the requirements of the Settlement Agreement and Final Order approved on May 10, 2004.

FINALLY, IT IS ORDERED that the Respondent shall pay a \$75.00 hearing fee and the \$90.00 fee for the court reporter. The \$165.00 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 23, 2004.

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.