BEFORE THE IOWA BOARD OF PODIATRY

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST:	)	DIA NO. 08DPHPE003
	)	FILE NO. 05-004, 06-024, 06-025
DONNIS F. CRANK, D.P.M.,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**
RESPONDENT	)	

STATEMENT OF THE CASE

On October 10, 2008, the Iowa Board of Podiatry (Board) filed a Statement of Charges against Donnis F. Crank, D.P.M. (Respondent), charging him with violating three counts. Count I charged the Respondent with professional incompetency in violation of Iowa Code section 147.55(2) and 272C.10(2) and 645 IAC 224.4(2). Count II charged the Respondent with practices harmful or detrimental to the public in violation of Iowa Code sections 147.55(3) and 272C.10(3) and 645 IAC 224.4(3). The third count alleged that the Respondent committed negligence in the practice of the profession in violation of 645 IAC 224.4(11). The hearing was initially scheduled for January 9, 2009 but was later continued.

The hearing was held on April 9, 2010 before the Board with the following members participating: Dr. Jill Scholz, DPM, Acting Chairperson; Dr. Denise Mandi, DPM; Dr. Kelly L. Kadel; and Patsy Hastings and Bridget Maher, public members. Respondent appeared and was represented by Attorney James H. Winters. Assistant Attorney General Theresa O'Connell Weeg represented the State of Iowa. The hearing was closed to the public pursuant to Iowa Code section 272C.6(l) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge John M. Priester assisted the panel in conducting the hearing and was instructed to prepare a written decision in accordance with their deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Matters Asserted; Orders for Continuance; Hearing Orders; the testimony of the witnesses; State Exhibits 1-28 and Respondent's Exhibits A-C.

FINDINGS OF FACT

1. Respondent was issued license number 00524 to practice podiatric medicine in the state of Iowa on July 31, 1991. On October 10, 2008, the Board filed a Statement of Charges against the Respondent, charging him with three counts in response to the Board receiving three written complaints against the Respondent. (State Exhibit 1)

2. On June 7, 2005, the Board received a complaint from a patient of the Respondent's. Patient No. 1 complained about a surgery performed by the Respondent on October 1, 2004. (State Exhibit 6).

3. On August 16, 2006, the Board received a complaint from a patient of the Respondent. Patient No. 2 complained about a bunion surgery performed by the Respondent in April 2001, February 2003 and June 2005. (State Exhibit 15).

4. On August 16, 2006, the Board received a complaint from a patient of the Respondent's. Patient No. 3 complained about a surgery performed on her heel on August 5, 2005 by the Respondent. (State Exhibit 21).

5. During the investigation, the Board gathered and reviewed the three patients' records from the Respondent. The Board's investigative file was subsequently referred to Dr. Andrew C. Stanislav, D.P.M., to conduct a peer review of the complaints. Dr. Stanislav found the following after reviewing all the records:

Patient No. 1:

Dr. Stanislav found that the Respondent's actions amounted to professional incompetency when he performed a surgery without obtaining radiographs (x-rays) pre or post-operatively. By taking the radiographs, the Respondent "could have noticed the hypertophied tibial sesamoid, and therefore resected less bone from the medial aspect of the first metatarsal or selected a different treatment option. He also could have noticed that the tailors bunion had already been operated on previously. By taking x-rays postoperatively, he could have noticed that the first metatarsal head had been staked. It also appears that there was an undiagnosed fifth metatarsal neck fracture that may have been caused by the surgery. This could have been diagnosed and treated accordingly if radiographs were taken."

Dr. Stanislav also found the Respondent's care of Patient No. 1 constituted professional incompetency by substandard clinical note taking. The Respondent's note

taking failed to conform to the minimum standard of acceptable note taking. Examples included:

1. No mention in his initial patient visit of pertinent past surgical history. This would be important because he would have discovered that patient No. 1 had undergone previous reverse chevron fifth metatarsal osteotomy by Dr. Bratkiewicz in 2002.
2. He never mentions in his notes the patient experiencing pain or discomfort in her shoes as a result of the tailors bunion, or describes physical exam findings such as prominent bone over lateral aspect of fifth metatarsal head, redness, swelling, pain upon fifth metatarsal phalangeal joint range of motion. The patient actually told Dr. Bratkiewicz during her second opinion visit that she experienced no pain whatsoever prior to the Respondent's surgery, and that he acted like he would not operate on the big toe if she did not allow him to operate on the tailor's bunion.
3. The Respondent also does not document any of the classic signs or symptoms of plantar fasciitis that the patient would typically describe. Subjective findings would include dull or sharp pain in the morning or pain after sitting for extended periods of time then ambulating. Exam findings would include pain upon palpation of the plantar fascial insertion, tightness of the medial or central bands of the plantar fascia, or the presence or absence of bursa around the heel area.
4. The Respondent should have better documented all conservative treatments discussed, offered, and implemented prior to surgery. Instead, the Respondent simply listed the procedures he was performing, with no reasoning or physical findings to support the procedures he was scheduled to do.

Dr. Stanislav also found the Respondent's treatment to constitute professional incompetency by failing to pursue conservative treatments prior to surgery. The Respondent only had the patient try a prefabricated orthotics, adjusting her current orthotics and prescribing anti-inflammatory medication for heel pain. The Respondent did not try numerous other modalities for her heel pain including: icing, stretching exercises, avoiding barefoot walking, different shoe types, cortisone injections, night splints, and custom arch supports which may have prevented her from undergoing the EPF procedure.

Dr. Stanislav also found that the Respondent's treatment amounted to professional incompetency by the Respondent's failure to refer this patient to another physician for a second opinion when conservative treatments postoperatively were unsuccessful. The

Respondent successfully diagnosed the patient as having a hypertrophied tibial sesamoid, but other than adjust her orthotics, the Respondent did little to correct the condition. He mentioned in his narrative that she needed surgery to correct the problem, but the Respondent was concerned about possible complications from this type of surgery, and therefore he did not want to proceed with surgery. If the Respondent did not want to perform this type of procedure himself he should have sent the patient to someone who could have successfully performed the procedure. This is exactly what happened once Patient No. 1 was seen by Dr. Bratkiewicz, and the patient underwent successful removal of the tibial sesamoid with Akin osteotomy.

(State Exhibit 3).

Patient No. 2:

Dr. Stanislav found similar examples of professional incompetency in Patient No. 2 that were found in Patient No. 1. The Respondent's records evidenced substandard documentation/note taking and the Respondent failed to explore conservative treatments.

The peer reviewer also found that the Respondent's treatment constituted professional incompetency by failing to choose the correct procedure for the treatment of Patient No. 2 that resulted in an unsuccessful outcome. Removal of the sesamoid during the original hallux limitus surgery is not the standard of care in performing a decompression osteotomy type procedure. The Respondent states in his operative report that following the decompression osteotomy, tracking of the joint was off so he decided to remove the medial sesamoid. Instead of removing the sesamoid, the Respondent should have tried to free up the sesamoids, and release the plantar adhesions. This will normally improve joint range of motion without having to remove a sesamoid.

More importantly, radiographs taken approximately four years following the original Hallux limitus surgery showed significant first metatarsophalangeal joint space narrowing, elongated positioning of the first metatarsal, and peeking of the tibil sesamoid with the mild hallux varus deformity. There was relatively no osteophyte production on the lateral x-rays.

However, in the Respondent's notes he states that the films revealed good alignment of the hallux and first metatarsal with some bone formation on the dorsum of the metatarsal head. The Respondent discussed performing a cheilectomy type procedure

with the patient at this visit, and prescribed an anti-inflammatory. Five weeks later he performed the procedure.

In Dr. Stanislav's opinion the Respondent selected the wrong procedure. Simply cleaning up the joint does not address the elongated position of the first metatarsal, or correct the advanced arthritic nature of the big toe joint. It also does nothing for the mild varus position of the hallux. The best option for Patient No. 2 in this case is first metatarsaloplalangeal join fusion. Implant arthroplasty is another option, but a fusion will eliminate pain more effectively.

(State Exhibit 14).

Patient No. 3:

Dr. Stanislav found professional incompetency in Patient No. 3 as in the first two patients in the Respondent's substandard documentation/note taking and lack of conservative treatments. The peer reviewer also found professional incompetency in the Respondent performing an unnecessary procedure and substandard surgical care.

Dr. Stanislav found that there was no mention of any plantar fasciitis symptoms on her office visit of April 20, 2005 that would warrant an EPF procedure, and no preoperative diagnosis on the August 8, 2005 operative report. There were no subjective complaints by the patient or clinical findings to suggest that the patient did indeed have both posterior and inferior heel pain. The Respondent does mention the posterior heel spur in the x-ray, but states nothing about the large inferior spur being relevant. Also, Patient No. 3 had already undergone the exact same EPF procedure six years prior to the surgery.

The peer reviewer also found the Respondent's actions to constitute professional incompetency in removing Patient No. 3's posterior heel spur. In the Respondent's operative report of August 8, 2005, the Respondent states that the Achilles tendon was detached and retracted from the bony exostosis. However, there was no mention of tendon reattachment. This is usually achieved with either some variety of soft tissue anchor or drill holes and large gauge nonabsorbable intraosseus suture.

The Respondent does not mention anywhere in his notes the length of time the patient is to remain non-weight bearing. Patient No. 3 may not have proceeded with surgery if she had understood how long she would be off her feet with this type of surgery. Also, there were no postoperative films to confirm adequate resection of the prominent posterior heel spur.

(State Exhibit 20).

6. The Respondent's expert witness was his former practicing partner, Bruce A. Pichler, DPM. Dr. Pichler reviewed the patient records and found that the Respondent's actions did not fall below the required standard of care. Dr. Pichler agreed that the Respondent should have performed pre and post operative x-rays prior to Patient No. 1's surgery. Other than that Dr. Pichler found the Respondent's care satisfactory.

Dr. Pichler found that the Respondent's note taking was sufficient. He testified that notes are mainly taken to defend a doctor from medical malpractice suits. Podiatrists are not required to use the SOAP (Symptoms, Objective Observations, Assessment, Plan for Treatment) note format. The SOAP note format is taught in medical school but is not required once a physician has become more experienced.

Dr. Pichler found that, with respect to Patient No. 1, the Respondent did utilize conservative treatment and did not act inappropriately by not seeking a second opinion.

With respect to Patient No. 2, Dr. Pichler opined again that the Respondent's clinical note taking was satisfactory, his treatment was appropriate without the use of conservative treatments, and the Respondent did utilize the correct procedure to treat the patient.

Lastly, with respect to Patient No. 3, Dr. Pichler again believes that the Respondent's clinical note taking did not fall below the required standard of care, his lack of conservative treatment was not inappropriate because it was the patient's decision to proceed with surgery, and the Respondent did perform the correct procedure on Patient No. 3.

(Testimony of Dr. Bruce Pichler, Respondent Exhibit A-C).

7. The Respondent testified that after these cases were brought to light the Respondent realized that his clinical note taking and writing was not clear enough. So about two and a half months ago he began subscribing to a transcription service. The Respondent explained the procedures he performed for all three patients and he believes that his treatment did not fall below the required standard of care.

(Testimony of Dr. Donnis Crank).

CONCLUSIONS OF LAW

Count I

The Respondent was charged with professional incompetency in violating Iowa Code sections 147.55(2), 272C.10(2) and 645 IAC 224.2(2). Iowa law provides that a license to practice a profession shall be "revoked, suspended, or otherwise disciplined when the licensee is guilty" of professional incompetence. Iowa Code §§ 147.55(2), 272C.10(2).

The governing administrative rules define professional incompetency as:

> 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 in 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.

645 IAC 224.2(2)

The preponderance of the evidence clearly established that the Respondent's treatment of the three patients constitutes professional incompetency in violation of Iowa Code sections 147.55(2), 272C.10(2) and 645 IAC 224.2(2).

The Respondent's clinical note taking constitutes professional incompetency as a substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners. Despite the Respondent and Dr. Pichler's opinion, clinic notes are not taken mainly for medical malpractice defense. Clinical notes are taken to document patient care: the observations made by the physician of symptoms, assessments of the symptoms and then a determination of the treatment to be pursued. That information is required and is the standard of care.

The Respondent's clinical notes fail to show that a clinical history and a physical exam were performed prior to the commencement of any surgery.

The formalities of the SOAP note format does not need to be used. However, the information from the SOAP note format must be in the notes. The Respondent's clinical notes were perfunctory and less than the minimum required. This constitutes professional incompetency.

The Respondent's failure to have pre and post operative x-rays taken on Patient No. 1 constitutes professional incompetency. Without these x-rays the Respondent operated on a patient without knowing the full extent of the patient's problems, and even whether surgery was necessary.

Count II:

The Respondent was charged with practice harmful or detrimental to the public in violation of Iowa Code sections 147.55(3) and 272C.10(3) and 645 IAC 224.4(3). Iowa law allows for the revocation, suspension or otherwise discipline of a professional if it is determined that the professional engaged in "practice harmful or detrimental to the public. Proof of actual injury need not be established." Iowa Code §§ 147.55(3) and 272C.10(3) and 645 IAC 224.2(3).

The Board finds that the State has carried its burden of proof on this Count. The Respondent's care of his patients is cast in doubt because of his poor clinical records. If the Respondent had clearly documented all of his observations, assessments and treatments, the Respondent would not be facing this Board.

The Respondent did not pursue conservative treatment of his patients' plantar fasciitis. Ninety percent of patients respond positively to conservative treatment of plantar fasciitis. However the Respondent quickly turned to surgery without exploring all appropriate conservative treatments.

From the lack of documentation in the clinical records, the Board finds that the tailor's bunion surgery for Patient No. 1 and the EPF surgery for Patient No. 3 were unnecessary. All surgeries for Patient No. 1 were found to be unnecessary because there were no x-rays taken prior to surgery to confirm any diagnosis that would require surgery.

These actions by the Respondent constitute practices that are harmful or detrimental to the public and the patients in particular.

Count III:

The Respondent was charged with negligence in violation of 645 IAC 224.2(11). The administrative rules provide that "negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession." 645 IAC 224.2(11).

The Board finds that the State has established this Count by a preponderance of the evidence. The Respondent's poor record keeping constitutes negligence. Many of the other concerns raised in this matter could have been verified or confirmed if the Respondent had properly documented everything in his clinical notes.

SANCTION

The Board finds that the Respondent's podiatric medical license should be placed on probation for three years.

ORDER

IT IS THEREFORE ORDERED that Respondent Donnis Crank is placed on probation for three years pursuant to 645 IAC 224.3(4). The Respondent shall arrange to have a Board-approved Monitor review 20% of the Respondent's files. The Monitor shall provide quarterly reports to the Board until the probation is completed.

IT IS FURTHER ORDERED, that pursuant to 645 IAC 224.3(7) the Respondent shall enroll in and complete an evaluation at the Center for Personalized Education for Physicians within three months. The Respondent shall be required to follow all recommendations made by CPEP.

IT IS FURTHER ORDERED, in accordance with Iowa Code section 272C.6, that the Respondent shall pay $75.00 for fees associated with the disciplinary hearing and $55.00 for the court reporter fees. The total fees of $130.00 shall be paid within thirty (30) days of receipt of this decision.

This findings of fact, conclusions of law, decision and order is approved by the board on April 29, 2010.

Judicial review of the board's action may be sought in accordance with the terms of the Iowa Administrative Procedure Act, from and after the date of this order.