

**BEFORE THE IOWA BOARD OF PODIATRY**

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<b>IN THE MATTER OF THE</b>	)	<b>DIA NO. 11IBP001</b>
<b>EMERGENCY ADJUDICATIVE ORDER</b>	)	<b>CASE NOS. 05-004, 06-024,</b>
<b>AND STATEMENT OF CHARGES</b>	)	<b>06-025</b>
<b>FILED AGAINST:</b>	)	
	)	
<b>DONNIS F. CRANK, DPM</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>Respondent</b>	)	<b>DECISION AND ORDER</b>

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On February 10, 2011, the Iowa Board of Podiatry (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Donnis F. Crank, DPM (Respondent) charging him with having a substantial lack of knowledge or ability to discharge professional obligations within the scope of practice, in violation of Iowa Code section 272C.10(2) and 645 IAC 224.2(2)(a). On that same date, the Board also filed an Emergency Adjudicative Order, pursuant to its authority under Iowa Code section 17A.18A and 645 IAC 11.28. The Emergency Adjudicative Order immediately suspended Respondent's license until such time as he obtains a Board-approved Practice Monitor to review 100% of his charts and to be physically present for all of his patient examinations and procedures.

A hearing was held on March 14, 2011 in the Lucas State Office Building, fifth floor conference room in Des Moines, Iowa. The state was represented by Assistant Attorney General September Lau. Respondent was represented by attorneys David L. Brown and Jay D. Grimes. The following Board members presided at the hearing: Eric Barp, DPM, Chairperson; Denise Mandi, DPM;; Kelly Kadel, DPM; Gregory Lantz, DPM; Paul Dayton, DPM; Patsy Hastings and Bridget Maher, Public Members. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2011), and was recorded by a certified court reporter.

After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

## THE RECORD

The record includes the Notice of Hearing and Statement of Charges; the Emergency Adjudicative Order; State Exhibits 1-7 (see Exhibit Index for description) and Respondent Exhibits A-C (see Exhibit Index for description). The state presented the testimony of Elizabeth Grace, M.D., Medical Director for the Center for Personalized Education for Physicians (CPEP). Respondent presented the testimony of Respondent, Steven Quam, DO; Thomas Klein, DPM, DO; and Dawn Schissel, MD.

## FINDINGS OF FACT

1. Respondent is a graduate of the University of Osteopathic Medicine and Health Science College of Podiatric Medicine and Surgery and has completed an externship and a preceptorship. Respondent was initially issued license number 00524 by the Board on July 31, 1991 and has continually practiced podiatry until the Board issued the Emergency Adjudicative Order. Respondent has had a solo podiatry practice in West Des Moines, Iowa since 2004. (Testimony of Respondent; Exhibits 3, 4)
  
2. On October 10, 2008, the Board charged Respondent with professional incompetency, practice harmful or detrimental to the public, and negligence. The Board issued its Findings of Fact, Conclusions of Law, and Decision on April 29, 2010, following an evidentiary hearing. The Board found the following serious deficiencies in Respondent's care and treatment of three patients:
  - Respondent's clinical note taking failed to show that a clinical history and physical exam were performed prior to surgery and failed to clearly document Respondent's observations, assessments, and treatments;
  - Respondent failed to take pre-operative and post-operative x-rays to confirm his diagnosis and to establish that surgery was necessary;
  - Respondent performed plantar fasciitis surgery without exploring all appropriate conservative treatments; and
  - Respondent performed unnecessary surgeries (based on the lack of documentation in his clinical records).

The Board's Decision placed Respondent's license on probation for a period of three (3) years and required Respondent to have a Board-approved Monitor to review 20% of his patient files. The Board's Decision further required

Respondent to enroll in and complete an evaluation at the Center for Personalized Education for Physicians (CPEP) and to follow all of CPEP's recommendations. (Exhibit 3)

3. Respondent completed the CPEP assessment on October 7-8, 2010. Prior to the assessment, CPEP staff conducted a telephone interview with Respondent and asked him to complete a written intake questionnaire. CPEP chose some of Respondent's actual patient charts for review by CPEP's consultants. The charts were from 2010 and included surgical and outpatient cases representing a variety of diagnoses and conditions.

At the beginning of the assessment, Respondent completed a timed neuropsychological screening test. Respondent then participated in three 20-minute simulated patient (SP) encounters in an exam room setting. After the SP encounters, Respondent was asked to document a progress note. The simulated patients were trained to present the following actual conditions typically seen in a podiatry practice: history of stress fracture of the first metatarsal, right foot pain, and plantar fasciitis. The SP encounters were videotaped and analyzed by a communication consultant.

After the simulated patient encounters, Respondent had separate clinical interviews with three board-certified podiatrists. A CPEP staff member was present for each of the clinical interviews. The clinical interviews were based on the patient charts obtained from Respondent's practice, on hypothetical cases, and on topic-based discussion. Ninety minutes is set aside for each clinical interview, although the actual interview may be longer or shorter than ninety minutes. According to Respondent, his three clinical interviews lasted 34 minutes, 43-44 minutes, and 45-50 minutes. (Exhibit 4; Testimony of Elizabeth Grace, M.D.; Respondent)

4. At the end of the CPEP assessment, reports are generated by the clinical interviewers, by the communication consultant, and by a clinical psychologist who reviews the neuropsychological screening test. CPEP's Associate Medical Director reviews all of the data and drafts the initial written Assessment Report. The Assessment Report is subsequently reviewed by a second Associate Medical Director and by CPEP's Executive Director before it is signed and released. (Testimony of Elizabeth Grace, M.D.)

5. Respondent's Assessment Report included the following findings and recommendations with respect to his medical knowledge and patient care:

a. Educational Needs-Medical Knowledge: Respondent demonstrated "marginally adequate medical knowledge with a significant need for improvement." CPEP identified the following educational needs for Respondent in the area of medical knowledge:

- Appropriate components of an adequate podiatric history and physical exam;
- Management of persistent pain in the hallux limitus;
- Anatomy of bones identifying the surgical neck of the metatarsals;
- Bone healing physiology including the time frame for healing and the functions of osteoclasts and osteoblasts;
- Definition and identification of abnormal metatarsal length;
- Diagnosis and management of stress fractures;
- Evidence-based indications for specific procedures in the surgical treatment of bunion deformity, plantar fasciitis and lesser metatarsalgia;
- Identification and implication of bony callus on X-rays in postoperative as well as post-injury situations;
- Complete differential diagnosis of ganglion cyst;
- Mechanism of renal and gastric side effects of NSAIDs;
- Potential causes of skin callus formation;
- Indications for monitoring liver function with use of antifungal medications; and
- Evidence-based use of conservative management of bunion deformity and plantar fasciitis.

b. Educational Needs-Clinical Judgment and Reasoning: Respondent demonstrated "inadequate" clinical judgment and reasoning during the assessment. CPEP identified the following educational needs for Respondent in the area of clinical judgment and reasoning:

- Consistent ability to gather adequate clinical information in a logical and complete fashion in both the history and physical exam;
- Acceptable components of postoperative evaluation of patients;
- Appropriate routine postoperative management including monitoring for possible complications of surgery;

- Consistent structured formulation of differential diagnoses and logical conclusions based on data;
- Flexible thinking and consideration of diagnostic possibilities and treatment options including conservative and surgical options;
- Recognition and prevention of iatrogenesis;
- Evidence-based decision making in diagnosis, evaluation and treatment options;
- Recognition of complications of surgery;
- Application of knowledge into practice;
- Use of consultants.

c. Educational Needs- Review of Patient Charts and Documentation: CPEP's findings were based on the consultants' review of Respondent's own patient charts and on review of Respondent's documentation of the three simulated patient encounters. The report concluded that Respondent's patient care documentation was inadequate and that it would be difficult for another provider to assume care of his patients based on his documentation. Respondent's chart notes did not follow traditional format, were barely legible, and lacked content regarding patient history, x-rays, and physical examinations. CPEP identified the following educational needs for Respondent in the area of documentation:

- Adoption of a process for documentation that produces a legible document;
- Consistent use of an organized format for outpatient and inpatient notes;
- Complete documentation of a patient's history including the past medical history, medications, allergies, family history, social history, and review of symptoms;
- Complete documentation of a patient's physical exam including vital signs and a focused yet complete exam that includes a neurovascular and skin exam;
- Complete documentation of an assessment of the patient's problem with a differential diagnosis and/or clinical thinking;
- Complete documentation of plans for follow-up including timing for follow-up;
- Inclusion of objective X-ray findings when documenting X-ray interpretations;
- Complete and organized documentation of surgical procedures;

- Complete and organized documentation of postoperative patient care.

(Exhibit 4; Testimony of Elizabeth Grace, M.D.)

6. The CPEP report noted that while Respondent reported more than 120 hours of continuing medical education (CME) activities in the past 36 months, the appropriateness of the education could not be evaluated because Respondent did not provide specific information about the activities. The CPEP report identified the following educational needs for Respondent with respect to practice based learning:

- Consider the use of medical content Internet-based resources;
- If not already in place, consider implementation of a system to allow easy access to information about his patient population for practice improvement opportunities.

(Exhibit 4; Testimony of Elizabeth Grace, M.D.)

7. The CPEP report found that Respondent exercised excellent clinician-patient communication skills during the simulated patient encounters. His communication skills were consistently professional throughout the assessment, both with the consultants and with CPEP staff. CPEP did not identify any educational needs for Respondent in the areas of clinician-patient communication, inter-professional communication, or professionalism. (Exhibit 4; Testimony of Elizabeth Grace, M.D.)

8. CPEP evaluates approximately 100 health care providers each year, typically through referrals from their licensing boards or employers. Approximately 85-90% of those evaluated are identified as having educational needs. CPEP's recommendations to address those educational needs fall into three broad categories:

- independent, self-directed education;
- education in a residency or residency-like setting; and
- a structured educational intervention.

CPEP offers structured educational intervention programs to address the identified areas of need. Most of CPEP's interventions require 6-12 months.

CPEP Associate Medical Directors actively monitor the individual's progress and compliance with the plan. Health care providers who participate in a structured educational intervention should be able to address their educational needs while they continue or return to practice. (Testimony of Elizabeth Grace, M.D.; Exhibits 5, 6)

The CPEP Assessment Report recommended that Respondent participate in a "structured, individualized Education Intervention" to address his identified areas of need. The report noted that some of Respondent's areas of need may only require moderate time and commitment. Other areas of need, such as Respondent's application of knowledge to patient care, can be challenging to remediate and may require ongoing monitoring over a period of time to ensure success. CPEP recommended that Respondent's Educational Intervention include:

- An Educational Preceptor: Respondent should establish a relationship with an experienced educational preceptor in podiatry. They should meet regularly to ensure integration of appropriate knowledge into practice. The meetings should include: review of cases and documentation, discussion of decisions related to those cases, review of specific topics, making plans for future learning, and prospective review of surgical cases to ensure that conservative measures have been considered and the correct surgical approach has been recommended.
- Continuing Medical Education (CME) and Self-Study: Respondent should engage in CME courses and self-study which include, but are not limited to, the topics indicated in the areas of demonstrated need and a surgical podiatry update or refresher course.
- Documentation: Respondent should complete a documentation course with a follow-up component and should adopt a charting system that includes problem and medication lists.

(Testimony of Elizabeth Grace, M.D.; Exhibit 4)

9. Respondent's summary scores on the cognitive function screening test were within the broad range of normal, compared to age-normed controls. However, given the variability in Respondent's scores and his low performance on a few tests, CPEP recommended referral for further neuropsychological evaluation designed to measure skills and abilities related to higher level brain functioning. CPEP recommended that Respondent complete this evaluation

before engaging in any of the recommended educational activities. (Exhibit 4; Testimony of Elizabeth Grace, M.D.)

Respondent obtained the recommended neuropsychological evaluation from clinical neuropsychologist Derek A. Campbell, Ph.D. Dr. Campbell submitted a detailed written report dated November 23, 2010. The majority of the testing results were within normal limits or broad normal limits. Respondent's writing was mildly impaired, his auditory attention was borderline impaired, his constructional praxis was borderline impaired, his visual construction skills were within the severely impaired range, his visual-spatial organization was mildly impaired, and he had moderately impaired performance on executive functioning.

Dr. Campbell concluded that Respondent's medical history and cognitive profile raises suspicions regarding mild cerebral microvascular disease. Respondent's pattern of performance appeared consistent with mild dysfunction in frontal-subcortical circuitry that is most notably associated with diminished concentration, visual-spatial analysis, concept formation, and learning efficiency. It was unclear to Dr. Campbell how Respondent's reduced functioning in these areas impacted his ability to practice podiatry. Dr. Campbell and Respondent discussed the importance of reducing risk factors for further microvascular change. Dr. Campbell noted that it would be beneficial for Respondent to be re-evaluated in 12 months. (Exhibit 7; Testimony of Respondent)

Respondent attributed some of the testing results showing impairments to his inability to draw and a hearing loss in his right ear. After reviewing the findings with Dr. Campbell, Respondent was under the impression that his testing results were not atypical for a person his age (69 years old). (Testimony of Respondent)

10. On February 10, 2011, the Board issued an Emergency Adjudicative Order immediately suspending Respondent's license until such time as he obtained a Board-approved practice monitor to review 100% of his charts and to be physically present for all of his patient examinations and procedures. The Emergency Adjudicative Order was based on the facts brought out at the prior hearing, on the CPEP Assessment Report, and on the neuropsychological evaluation performed by Dr. Campbell. The Board concluded that Respondent's inadequate clinical judgment and reasoning poses an immediate danger to the health, safety and welfare of his patients unless he practiced with a monitor. The Board further concluded that the monitoring requirements imposed in the April

Order were insufficient to protect the public health, safety, and welfare. (Exhibit 1)

11. Respondent has not practiced podiatry since receiving the Board's Emergency Adjudicative Order. Respondent had submitted the name of David Yount, DPM as a board-certified podiatrist who is willing to serve as his practice monitor under the terms outlined in the Board's April 29, 2010 Decision. As of the date of the hearing, the Board had not responded to Respondent's request to use Dr. Yount as his practice monitor. (Testimony of Respondent)

12. Respondent obtained a contract from CPEP for a personalized educational intervention program but does not think he can afford CPEP's fees. As of the date of the hearing, Respondent had not made any plans for an alternative educational intervention program. (Testimony of Respondent)

13. At hearing, Respondent presented testimony from Dawn Schissel, M.D., Thomas Klein, DPM, D.O., and Steven R. Quam, D.O.

a. Dr. Schissel is a family practice physician who has her practice in the same building where Respondent has his podiatry practice. Dr. Schissel has referred a number of patients to Respondent and all have been happy with the care that Respondent provided to them. Respondent has performed plantar fasciitis surgery on Dr. Schissel and on her husband. Both of them did well following surgery and were pleased with their outcomes. Respondent has also referred patients to Dr. Schissel. (Testimony of Dawn Schissel, M.D.; Exhibit A)

b. Dr. Klein is both a podiatric physician and an osteopathic physician. Dr. Klein practiced podiatry from 2000-2004 prior to entering medical school. During this time, Dr. Klein interacted with Respondent frequently and they worked in the same clinic for a period of time. Dr. Klein testified that he learned a lot from Respondent and believes that Respondent is a very competent podiatrist. Dr. Klein is now working as an Interventional Pain Specialist with a practice in Clive, Iowa. He has had not worked with Respondent since 2004. (Testimony of Thomas Klein, DPM, DO.; Exhibit B)

c. Dr. Steven Quam is an anesthesiologist who specializes in chronic pain management. Dr. Quam is the medical director of the surgery center

where Respondent performs most of his surgeries. Dr. Quam and his anesthesia group have provided anesthesia services for Respondent's surgical patients for a number of years. Dr. Quam knows of very few, if any, postoperative complaints or complications from Respondent's surgical patients. In his opinion, Respondent is a good surgeon with technique similar to his peers. Dr. Quam believes that Respondent screens his patients carefully and explores conservative treatments prior to surgery. (Testimony of Steven Quam, D.O.; Exhibit C)

## CONCLUSIONS OF LAW

### *I. Emergency Adjudicative Order*

Pursuant to Iowa Code section 17A.18A and 645 IAC 11.28, the Board is authorized to issue an Emergency Adjudicative Order to suspend a license in whole or in part when necessary to prevent or avoid immediate danger to the public health, safety or welfare. The Board issued the Emergency Adjudicative Order in this case based upon its findings in the prior disciplinary proceeding, its review of the CPEP Assessment Report, and the written report from Campbell Neuropsychological Services. The information available to the Board at that time provided a reasonable basis for the Board's conclusion that Respondent's clinical judgment and reasoning posed an immediate danger to the health, safety, and welfare of his patients unless his practice was fully monitored. The Board scheduled a prompt hearing to determine if it was necessary to continue the Emergency Adjudicative Order.

### *II. Professional Incompetency*

Pursuant to Iowa Code section 272C.10(2), the Board is authorized to revoke or suspend a license for 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.

...

The preponderance of the evidence established that Respondent is in violation of Iowa Code section 272C.10(2) and 645 IAC 224.2(2)(a) due to his substantial lack of knowledge or ability to discharge professional obligations within the scope of practice. CPEP coordinated a structured and multi-faceted assessment of Respondent's knowledge and abilities across the spectrum of podiatric practice. CPEP has developed substantial expertise in the years it has been providing assessments for health care providers. The assessment was thorough and included neuropsychological screening, review of Respondent's own patient records, videotaped simulated patient (SP) encounters, and interviews with three board-certified practicing podiatrists who had access to Respondent's patient records. Based on this record, the Board was satisfied that the consulting podiatrists had more than sufficient information and spent sufficient time with Respondent to form reasonable conclusions about his professional knowledge and abilities.

The CPEP Assessment Report identifies numerous areas of deficiency in Respondent's medical knowledge, his clinical judgment and reasoning, and his documentation. CPEP recommended, and the Board agrees, that these findings justify requiring Respondent to complete a structured, individualized Educational Intervention to address the identified areas of need. CPEP recommended that Respondent complete a thorough neuropsychological evaluation prior to beginning an educational intervention. Respondent has completed the neuropsychological evaluation, and the Board is satisfied that Respondent does not have any cognitive or psychological deficits that will prevent him from benefiting from the educational intervention.

Respondent presented testimony from three physicians who believe that Respondent is a knowledgeable and competent podiatrist based on their limited professional contacts with him. However, two of the physicians are not podiatrists, and the one who is a podiatrist has not worked with Respondent since 2004. The CPEP Assessment Report provided a more reliable assessment of Respondent's professional knowledge and abilities.

Respondent objects to the cost of completing the Educational Intervention through CPEP. The Board is willing to allow Respondent to obtain an alternative Board-approved Educational Preceptor to work with him and formulate an

individualized Educational Intervention plan. However, the Educational Intervention must be approved by the Board or the Board's designee and must be properly structured to address the areas of need identified in the CPEP Assessment Report. In addition, it is essential for Respondent's practice to be monitored, as outlined in this Decision and Order, until the Educational Intervention is successfully completed.

### **DECISION AND ORDER**

IT IS THEREFORE ORDERED that the Emergency Adjudicative Order issued on February 10, 2011 is hereby RESCINDED. IT IS FURTHER ORDERED that License Number 00524, issued to Respondent Donnis F. Crank, DPM, is hereby placed on PROBATION for an INDEFINITE PERIOD, effective immediately upon issuance of this decision. IT IS FURTHER ORDERED that Respondent's indefinite probation is subject to the following terms and conditions:

1. Prior to resuming active practice, Respondent must obtain Board approval for a practice monitor and for a written practice monitoring plan. The approved practice monitor must sign an agreement to provide the monitoring services as outlined in this Decision and Order and to provide written quarterly reports to the Board. The practice monitor may be Dr. David Yount or may be another board-certified podiatrist approved by the Board or the Board chair (as the Board's designee). At a minimum, the practice monitoring plan shall provide that the practice monitor will:
  - a. Meet regularly with Respondent and review at least 20% of all of Respondent's nonsurgical patient files. Files shall be reviewed for proper documentation, complete history and physicals, attention to patient illnesses and health conditions, appropriate diagnoses and clinical decision making, and utilization of appropriate conservative treatments.
  - b. Review 100% of Respondent's surgical patient files both pre-operatively and post-operatively. In addition to the topics listed in paragraph "a," the surgical files shall be reviewed for appropriate pre- and post-operative decision making and judgment.

c. File written quarterly reports with the Board according to a schedule to be outlined in the monitoring plan. Topics addressed in the quarterly written reports shall include, but not be limited to: Respondent's progress in the area of clinical judgment, pre-operative work ups, record keeping, health and physicals, attention to patient illnesses, use of conservative treatments, and pre- and post-operative decision making. The quarterly reports shall also address whether Respondent is successfully integrating new concepts and knowledge into his practice.

2. Within sixty (60) days of the date of issuance of this Decision and Order, Respondent shall submit, for Board approval, the name and curriculum vitae of an experienced Educational Preceptor and a structured written Educational Intervention Plan. The Respondent may choose to complete the Educational Intervention through CPEP or he may seek Board approval for a substantially similar Educational Intervention that addresses all of the areas of educational need identified by CPEP in the Assessment Report. Respondent's Educational Intervention Plan must include specific educational activities, timeframes for enrollment and completion, and a process for evaluating his progress. The specific educational activities must include, but not be limited to:

- a. A didactic and hands-on surgical podiatry update similar to the 1-2 week surgical mini-residency update offered by the Podiatry Institute;
- b. Coursework on :History and Physicals and Diagnosis; and
- c. Coursework on documentation and charting systems.

Respondent shall have regular meetings with the Educational Preceptor, who shall monitor his progress and compliance with the plan on an ongoing basis. Respondent's Educational Preceptor must file written quarterly reports with the Board according to a schedule to be outlined in the Educational Intervention Plan. The written quarterly reports shall include a record of all meetings between Respondent and the Educational Preceptor. The quarterly reports shall also document Respondent's educational activities during the preceding quarter and the Preceptor's

evaluation of Respondent's progress towards the goals established in the Educational Intervention Plan.

3. Respondent shall continue to comply with the conditions of probation set out above in paragraphs (1) and (2) until the Board agrees to modify this Order or to release Respondent from indefinite probation. The Board will release Respondent from indefinite probation when it determines that he has obtained maximum benefits from the Practice Monitoring Plan and from the Educational Intervention. The Board may consider reducing the intensity or frequency of practice monitoring prior to releasing Respondent from indefinite probation.

IT IS FURTHER ORDERED that if Respondent does not fully comply with the requirements of this Decision and Order, the Board may take further disciplinary action, pursuant to Iowa Code section 272C.3(2)(a)(2011).

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$192.50 for the court reporter fees. The total fees of \$267.50 shall be paid within thirty (30) days of receipt of this decision.

Dated this 5th day of April, 2011.