Before the
Administrative Hearing Commission
State of Missouri

STATE BOARD OF PODIATRIC MEDICINE,

Petitioner,

vs.

No. 05-1834 CP

CHARLES DIAL, D.P.M.,

Respondent.

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On June 6, 2006, the parties filed a “Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Board of Podiatric Medicine and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law.” Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. Buckner v. Buckner, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 330.160.2(5), (13) and (15), RSMo Supp. 2005. We incorporate the parties’ proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority’s decision or the parties’ agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045. RSMo 2000. We have no power to superintend agency compliance with statutory procedures. Missouri Health Facilities Review Comm. v. Administrative Hearing Comm’n, 790 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on June 6, 2006.

JUNE STRIEGELE Doughty
Commissioner
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF PODIATRIC MEDICINE,

v.

CHARLES DIAL, D.P.M.,

Petitioner,

No. 05-1834 CP

Respondent.

JOINT STIPULATION OF FACTS, WAIVER OF HEARING BEFORE THE
ADMINISTRATIVE HEARING COMMISSION AND STATE BOARD OF
PODiatric MEDICINE AND CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-3.440(3)) and pursuant to the terms of § 336.060, RSMo 2000, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 2000, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the state of Missouri and the State Board of Podiatric Medicine and jointly stipulate to the facts and consent to the imposition of disciplinary action against the podiatric license of Respondent based on the findings of fact and conclusions of law set forth below.
Respondent acknowledges that he is aware of the various rights and privileges afforded it by law, including the right to appear and be represented by counsel; the right to have a copy of the complaint served upon it by the Administrative Hearing Commission prior to the entering of its order; the right to present evidence on Respondent’s own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, Respondent, Charles Dial, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Board of Podiatric Medicine and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.

Based upon the foregoing, the Petitioner and Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission’s Findings of Fact and Conclusions of Law:

**Joint Proposed Findings of Fact and Conclusions of Law**

1. The State Board of Podiatric Medicine ("the Board"), is an agency of
the state of Missouri created and established by § 330.110, RSMo 2000, for the purpose of administering and enforcing the provisions of Chapter 330, RSMo.

2. Respondent, Charles Dial, D.P.M. ("Dr. Dial") is licensed by the Board as a podiatrist, license no. 000727. Dr. Dial’s license is, and was at all times relevant herein, current and active.

3. Dr. Dial is a single practitioner of his own podiatric clinic, located at 141 E. Hwy 54, Camdenton, Missouri.

4. Dr. Dial has a Missouri Controlled Substances Registration with the Bureau of Narcotics and Dangerous Drugs ("BNDD"), registration no. 5539.

5. On November 4, 2004, the BNDD conducted an inspection of Dr. Dial’s clinic. The inspection resulted in BNDD suspending Dr. Dial’s registration to prescribe controlled substances for 90 days.

6. The November 4, 2004 BNDD inspection revealed that Dr. Dial failed to document controlled substance records:


2. On January 23, 2004 and February 19, 2004, Dr. Dial issued a prescription for Vicodin ES to P.K., and these two prescriptions were not recorded.

7. State regulation 19 CSR 30-1.048(2) states:

(2) Each individual practitioner shall maintain a
record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient’s medical record. When the controlled substance record is maintained in the patient’s medical record and the practitioner is not the custodian of the medical record, the practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

8. Section 195.050.6, RSMo 2000, states:

6. Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health.

9. Dr. Dial’s failure to maintain records for all controlled substances prescribed is in violation of 19 CSR 30-1.049(2) and Section 195.050.6, RSMo 2000.

10. On or about July 2, 2003, Dr. Dial prescribed Talwin NX #30 to patient, “R.M.” This prescription was not recorded. Dr. Dial recorded in R.M.’s patient record that R.M. was treated for pain and swelling of his right leg.

11. On or about March 3, 2003, Dr. Dial prescribed H-C Tussive cough syrup to a patient, “J.M.” Dr. Dial did not record this prescription.

12. H-C Tussive cough syrup a schedule III controlled substance under Section 195.017.6(4)(d), RSMo 2000.

13. Talwin NX is a schedule IV controlled substance under Section 195.017.8(5), RSMo 2000.
14. Vicodin is a schedule III controlled substance under Section 195.017.6(4)(d), RSMo 2000.

15. Section 330.010.2 defines “podiatrist” as follows:

   [T]he diagnosis, medical, physical, or surgical treatment of the ailments of the human foot, with the exception of administration or general anesthetics, or amputation of the foot...

   For the purposes of this chapter, the term “human foot” includes the ankle and the tendons which insert into the foot as well as the foot.

16. Dr. Dial practiced outside the scope of his license as a podiatrist in violation of Section 330.910, RSMo 2000.

17. Section 195.070.1, RSMo 2000, states:

   1. A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense controlled substances or he may cause the same to be administered or dispensed by a nurse or graduate physician under his direction and supervision.

18. Dr. Dial prescribed controlled substances outside the scope of his practice as a podiatrist in violation of Section 195.070.1, RSMo 2000.

19. On April 26, 2005, BNDD sent Dr. Dial a letter, by certified mail, notifying Dr. Dial that his Controlled Substances Registration was suspended for a period of 90 days, beginning May 29, 2005 and ending August 30, 2005.

20. Dr. Dial’s conduct alleged herein constitutes incompetency and misconduct in the performance of the functions or duties of a licensed podiatrist.

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21. Dr. Dial's conduct alleged herein constitutes a violation of any professional trust of confidence with his patients.

22. Cause exists for the Board to take disciplinary action against Dr. Dial's license as a pediatrician pursuant to Section 330.160.2(5), (13), and (15), RSMo Cum. Supp. 2005, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter... for any one or any combination of the following causes:

   (5) Incompetency, misconduct, repeated negligence, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

   (13) Violation of any professional trust or confidence;

   (15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

II

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the
authority of § 621.110, RSMo 2000. This Disciplinary Order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

1. Licensee’s license, no. 000727, is hereby placed on PROBATION for a period of one (1) year ("disciplinary period"). During the disciplinary period, Licensee shall be entitled to engage in the practice of podiatric medicine under Chapter 330 provided he complies with the following terms and conditions:

I. During the disciplinary period, Licensee shall submit documentation to the Board of completion of one course in the record keeping of controlled substances. The course shall be completed within six months of the effective date of this Agreement. This course is in addition to the continuing education hours required for licensure renewal by the Board. The documentation shall include a pamphlet, brochure, or other materials that indicate the content of the course attended. Failure to obtain the required continuing education course and/or submit the required documentation to the Board in a timely manner shall result in a violation of the terms of discipline.

II. During the disciplinary period, Licensee shall, at Licensee’s cost, submit to biological fluid testing as required by the State Board of Podiatric Medicine. Licensee shall, upon demand and without delay, allow the Board’s designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Board’s designated representative in providing such samples. The presence of any drug or a prescription drug not supported by a valid prescription or by a prescription documentation which has not been forwarded to the Board as provided in this Agreement shall constitute a violation of Licensee’s discipline.

III. GENERAL REQUIREMENTS

A. During the disciplinary period, Licensee shall comply with all provisions of Chapters 330 and 195, RSMo; all the regulations of the Board; all applicable federal and state drug laws, rules, and regulations; and all federal and state laws. State here includes all states and territories of the United States.
B. During the disciplinary period, Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) days of any change in this information.

C. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other Board requirements necessary to maintain Licensee's license in a current and active state.

D. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Agreement.

E. During the disciplinary period, Licensee shall appear in person for interviews with the Board or its designee upon request.

F. Licensee shall submit written reports to the Board no later than April 1 and October 1 of each year of the disciplinary period on forms provided by the Board, stating truthfully whether there has been compliance with all the conditions of this Agreement. It is the Licensee's responsibility to see that the reports are submitted. Failure of the Board to provide the reporting forms shall not relieve the Licensee of the obligation to make the required reports.

G. In the event Licensee should leave Missouri to reside or practice podiatric medicine outside the state during the disciplinary period, Licensee shall notify the Board in writing of the dates of departure and return, no later than ten (10) days before Licensee's departure. Furthermore, Licensee shall, no later than ten (10) days after commencement of any residence or practice outside this state, notify in writing the podiatry licensing authorities in the jurisdiction in which Licensee is residing or practicing of Licensee's disciplinary status in Missouri. Licensee shall forward a copy of this written notice to the Board contemporaneously with sending it to the relevant licensing authority. Licensee shall continue to comply with these agreed terms of discipline while residing or practicing outside Missouri during the disciplinary period.

H. Licensee shall notify, within fifteen (15) days of the effective date of this Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee
shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

1. For purposes of this Agreement, unless otherwise specified in this Agreement, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this Agreement shall be forwarded to the State Board of Podiatric Medicine, Attention: Executive Director, P.O. Box 423, Jefferson City, Missouri 65102.

2. The parties to this Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as provided in Chapters 330. 610, and 620, RSMo.

3. Upon the determination of the Board that Licensee has failed to comply with the terms of this Agreement, the Board may revoke Licensee’s license or may take such other or additional disciplinary action against Licensee or Licensee’s license as the Board deems appropriate. No order shall be entered by the Board pursuant to this paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

4. Upon the expiration and successful completion of the period of probation, Licensee’s podiatric license in Missouri shall be fully restored if all other requirements of law have been satisfied.

5. If the Board determines that Licensee has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any
lawful remedies or procedures afforded it and is not bound by this stipulation in its
determination of appropriate legal actions concerning that violation. Furthermore, Licensee
agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine
if a violation of this agreement has occurred.

6. Licensee hereby waives and releases the Board, its members and any of its
employees, agents, or attorneys, including any former board members, employees, agents,
and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and
expenses, and compensation, including, but not limited to, any claims for attorney's fees and
expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under
42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters
raised in this litigation, or from the negotiation or execution of this settlement and release
agreement. The parties acknowledge that this paragraph is severable from the remaining
portions of this settlement and release agreement in that it survives in perpetuity even in the
event that any court of law deems this settlement and release agreement or any portion
thereof void or unenforceable.
RESPONDENT
Charles Dial, D.P.M.  
Date

PETITIONER
Becky Dunn  
Date
Executive Director

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