BOARD OF PODIATRIC MEDICINE
State of Missouri

BOARD OF PODIATRIC MEDICINE,

vs.

CHARLES DIAL, D.P.M.,

Case No. 96-001 CP

Respondent.

FINISHINGS OF FACT, CONCLUSIONS OF LAW, AND DISCIPLINARY ORDER

The Missouri State Board of Podiatric Medicine (the board), pursuant to notice
and at its regularly scheduled meeting on April 21, 2007, took up the matter of the
complaint alleging that Charles Dial, D.P.M., (Dial) violated the terms and conditions of
probation the board had previously imposed on his license.

The board was represented by Assistant Attorney General William Roberts. Dial
appeared in person with attorney Jamie Cox. Division of Professional Registration Legal
Counsel Kimberly Grinston acted as the board’s legal advisor.

Evidence was heard, exhibits were admitted, and the argument of counsel was
heard. The board took this matter under advisement. The board now makes the
following findings of fact and conclusions of law, and issues the following disciplinary
order.

Findings of Fact

1. The Board of Podiatric Medicine is an agency of the State of Missouri, created
and established by § 330.110 RSMo., for the purpose of administering and enforcing the
provisions of Chapter 330, RSMo.
2. Charles Dial, D.P.M., is licensed by the board as a podiatric physician, license no. 727. Dial's license is, and was at all times relevant herein, current and active.

3. The board and Dial entered into 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 that was incorporated into a Consent Order of the Administrative Hearing Commission on June 6, 2006. That Consent Order placed Dial's license on probation for one year based on violations of the laws regulating controlled substances and the practice of podiatric medicine committed by Dial and discovered by the Bureau of Narcotics and Dangerous Drugs.

4. The Consent order required that Dial, among other conditions:
   A. Attend a course on controlled substances record keeping within six months;
   B. Submit to drug tests, as required by the board, with the proviso that a positive test for any drug not supported by a valid prescription would be a violation of the probation; and
   C. Obey all federal and state drug laws.

5. Dial failed to complete the required course on controlled substances record keeping.

6. Dial has allowed his registration with the Bureau of Narcotics and Dangerous Drugs to lapse, and is thus barred from prescribing controlled substances.

7. Dial has limited his practice to cases where the use of controlled substances is not necessary.
8. The board's investigator, without previous appointment or warning, met with Dial on December 14, 2006, to question why Dial had not completed the required course on controlled substance record keeping. At the conclusion of that meeting the board's investigator collected a urine sample from Dial.

9. The urine sample provided by Dial on December 14, 2006, was found to contain metabolites of marijuana.

10. On January 19, 2007, the board's investigator, again without appointment or warning, met with Dial to obtain an explanation of why the December 14, 2006, urine sample contained marijuana metabolites. Dial insisted to the board's investigator that he had not smoked marijuana. The board's investigator collected another urine sample from Dial.

11. The urine sample provided by Dial on January 19, 2007, was found to contain metabolites of marijuana.

12. At the hearing on April 21, 2007, Dial admitted that he had smoked marijuana in December of 2006.


14. Although he did not specifically admit that he had no prescription for marijuana, a Schedule I controlled substance, Dial did not claim he had such a prescription.

15. Dial presented a laboratory report showing that he had recently been tested for the presence of marijuana metabolites and that the results were negative.
16. All of the lab tests in this case, including the one presented by Dial, show high levels of alcohol in his system at the times of the tests.

Conclusions of Law

A. The board has jurisdiction to determine whether or not Dial has violated the terms and conditions of his probation.

B. Dial failed to complete a course in controlled substances record keeping, in violation of the terms and conditions of his probation.

C. The presence of marijuana metabolites in Dial’s urine shows that he possessed marijuana, a Schedule I controlled substance. Said possession was without a prescription, and violated the terms and conditions of Dial’s probation.

D. Section 629.153 RSMo. allows the board to impose any lawful discipline when a violation of a probation order is found.

Disciplinary Order

The Missouri State Board of Podiatric Medicine, having found that Charles Dial, D.P.M., has violated the terms and conditions of the June 6, 2006, Consent Order, has determined to again probate Dial’s license to practice podiatric medicine.

The board has given careful consideration to the causes of Dial’s failure to successfully complete the probation required by the June 6, 2006, Consent Order, and the scope of Dial’s current practice, and has carefully crafted the following terms and conditions to ensure that Dial is successful in completing these terms. Dial is cautioned that the board expects him to give the same attention to detail and care in complying with
the terms and conditions of this probation that he would in his practice of podiatric medicine.

I. Term of Probation

A. Dial’s license to practice podiatric medicine shall be on probation for three years from the date that this order is issued.

B. At the expiration of three years from the date hereof, Dial’s license to practice podiatric medicine shall be fully restored, so long as he has fully complied with all of the terms and conditions of this order.

C. The three years shall not run, and shall be tolled, during any period that a court has stayed enforcement of this order, when Dial has allowed his license to lapse, when Dial has removed himself from the state of Missouri, or when Dial is absent from any place of business or residence of record with the board.

II. General Conditions of Probation

A. Dial shall maintain a current and active license to practice podiatric medicine. He shall pay all fees and comply with all other requirements to maintain a current and active license, including continuing education activities. Dial shall not apply for inactive status, and shall not attempt to surrender his license without the board’s specific authorization.

B. Dial shall notify the board in writing of any change of his home or work addresses or phone numbers within ten days of any such change.
C. Dial shall obey all of the laws and regulations pertaining to the practice of pediatric medicine. Violation of any of the laws and regulations pertaining to the practice of pediatric medicine is a violation of this order. The board’s remedies for the violation of the laws and regulations pertaining to the practice of pediatric medicine are not limited to this order.

D. Dial shall obey all federal and state criminal laws. The criminal laws of a state include the ordinances of the political subdivisions of the state that are punishable by fines or imprisonment.

E. Dial shall notify the board in writing of any arrest, summons, or other notice of the institution of proceedings alleging violation of federal or state criminal laws, including ordinance violations, within ten days of such event.

F. Dial shall notify the board in writing of any claim alleging that he has committed professional malpractice within ten days of learning of the claim. Such notice shall be given even if Dial believes that the claim is without basis in fact or law, and even if Dial lacks complete information regarding the claim.

G. Dial shall, upon request, meet with the board or its representatives at such times and places as required by the Board.

H. Dial shall, upon request, immediately submit documents showing compliance with the requirements of this agreement.

I. Dial shall truthfully answer any question posed by the board or its representative, and fully cooperate in any inquiry by the board into his practice of pediatric medicine or compliance with this order. Said cooperation may include, without limitation, signing waivers and consents to allow the board to inquire of third parties and
obtain information from them. The board will not require a waiver of the attorney-client privilege or any spousal privilege.

J. Dial shall file written reports with the board no later than the first business day after January 1 and July 1 throughout the period of probation informing the board on the status of his practice and his compliance with the terms and conditions of this probation. Any violation of the terms and conditions of this probation not previously reported to the board shall be disclosed in the next report.

III. Conditions Regarding Chemical Dependency, Treatment and Rehabilitation

A. Dial shall, within ten days of the date of this order, provide to the board a list of five individuals that he is willing to retain that are capable of assessing Dial’s chemical dependency and working with the board in Dial’s evaluation, treatment, and rehabilitation. The board will approve one of the people from that list, or may reject the entire list and require Dial to submit another list within ten days. Every person on the list must be licensed by the State of Missouri as a substance abuse counselor, psychiatrist, psychologist, professional counselor, or clinical social worker. Dial is encouraged to share this order with his prospects to ensure that they are willing to help him within the parameters of this order.

B. Dial shall, within six weeks of the date the board approves an evaluator, undergo a thorough evaluation for chemical dependency. Dial shall give the evaluator a complete copy of these Findings of Fact, Conclusions of Law and Disciplinary Order prior to the evaluation. Dial shall truthfully answer all questions of the evaluator, and fully cooperate in the evaluation process. If the evaluator requests the records underlying
this order Dial shall promptly sign a consent allowing the board to send copies of the records directly to the evaluator.

C. Dial shall insure that the evaluation is completed within 12 weeks of the date the board approves the evaluator. Any request for an extension of this time period shall be accompanied by a letter from the evaluator setting a date certain when the evaluation will be completed.

D. Dial shall have the evaluator mail the results of the evaluation directly to the Missouri State Board of Podiatric Medicine, P.O. Box 423, Jefferson City, Missouri 65102 within ten working days after the evaluation is complete. The written evaluation must include a description of any tests performed and test results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; and an appropriate treatment recommendation/plan. If there is no diagnosis requiring treatment, this should be specified in the evaluation.

E. Dial shall follow any recommendations for treatment made by the evaluator. If Dial believes that any such recommendations are incorrect, ill-advised, or otherwise improper, he may petition the board for relief from such recommendations as a condition of this probation.

F. If treatment is recommended, Dial shall:

1. Participate in any recommended treatment for chemical dependency. Dial shall show this agreement to treating professionals, and consent to the board providing information related to this order directly to treating professionals.
2. Require treating professionals to submit to the Board evidence that the treating professional is a licensed mental health professional or certified in the treatment of chemical dependency.

3. Execute any medical or other appropriate release which shall remain in effect for the entire period covered by this agreement authorizing the Missouri State Board of Pediatric Medicine to obtain records of Dial's treatment for chemical dependency. Dial shall not take any action to cancel this release. Dial shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.

4. Dial shall cause a treatment summary from his treating professionals to be submitted to the board on the first business day after February 1, May 1, August 1 and November 1 of every year.

a. The treatment summary shall state Dial's current progress and status related to the treatment recommendations/plan and Dial's current prognosis and treatment recommendations/plan.

b. The letter shall be sent by the treating professional directly to the Missouri State Board of Pediatric Medicine, P.O. Box 423, Jefferson City, Missouri 65102.

5. If Dial's treatment is successfully completed at any time during the period covered by this order, Dial shall cause the treating professional to submit a letter of final evaluation/summary which includes a statement that Dial has successfully completed treatment and that indicates whether Dial should continue in a twelve-step program. If continuance in a twelve-step program is recommended, Dial shall comply with the terms of paragraph 6.
6. If attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings is required as part of treatment or as part of the after-care plan, Dial shall send evidence of required attendance to the board on the first business day after February 1, May 1, August 1 and November 1 of every year. The evidence shall include the date, time and place of the meeting, and shall bear a signature or abbreviated signature of another person verifying attendance.

G. During the disciplinary period, Dial shall abstain completely from the consumption of alcoholic beverages. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of this order.

H. During the disciplinary period, Dial shall abstain completely from the use or possession of any controlled substance or other drug for which a prescription is required unless that use or possession of the drug has been prescribed by a person licensed to prescribe such drug and with whom Dial has a bona fide relationship as a patient. Dial shall inform any professional preparing a prescription that he is chemically dependent. Upon request, Dial shall execute a medical release authorizing the board to access all records pertaining to the condition, treatment and prescription in question maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in a biological fluid sample for which Dial does not hold a valid prescription shall constitute a violation of this order. The burden of proving that a valid prescription exists shall be on Dial.

I. Dial shall submit to biological fluid testing as required by the board at his own cost. Dial shall upon demand, and without delay, allow the board’s representatives to obtain witnessed biological fluid samples and shall cooperate fully and completely in
providing such samples. Dial is hereby advised that the board’s staff has been instructed
to obtain samples no less often than quarterly; repeated tests may be given in short
periods of time. Any cost incurred by the board in obtaining or testing a biological
sample shall be paid by Dial within ten days of demand.

IV. Conditions of Practice

A. Dial shall not apply for registration with the Bureau of Narcotics and
Dangerous Drugs. Any petition for relief from this condition shall be accompanied by
proof of completion of a course in controlled substances record keeping.

B. Dial shall file with the board a statement setting out his office days and hours
within ten days of the date of this order. Dial shall notify the board in writing prior to
altering the days and hours of his practice for any reason, including ill health or accident.
In the event Dial is unable to notify the board prior to altering the days and hours of his
practice due to a bona fide emergency, the notice shall be filed before the end of the next
business day and shall include a statement describing the bona fide emergency that
prevented prior notice.

B. Dial shall, within ten days of the date of this order, provide to the board a list
of five podiatric physicians that he is willing to retain to assist the board in the
supervision of his practice. The board will approve one of the podiatric physicians from
that list, or may reject the entire list and require Dial to submit another list within ten
days. Every person on the list must be licensed by the board as a podiatric physician.
Dial is encouraged to share this order with his prospects to ensure that they are willing to
help him within the parameters of this order.
C. On and after June 1, 2007, and until the termination of his probation, Dial shall not practice pediatric medicine except under the supervision of another pediatric physician approved by the board.

D. The supervising pediatric physician shall act on the board’s behalf in examining Dial’s practice as a pediatric physician. Dial shall fully cooperate with the supervising pediatric physician, and make available any and all records of Dial’s practice including patient and financial records. Dial shall affirmatively encourage his patients to consent to the supervising pediatric physician’s presence during examinations and procedures.

E. The supervising pediatric physician shall not be responsible for the care of Dial’s patients, which remains the complete responsibility of Dial, but instead shall be the board’s agent to generally insure that Dial’s practice complies with the law regulating the practice of pediatric medicine. The supervising pediatric physician is the board’s agent in discharging its health oversight responsibilities, and thus the privacy regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA) do not apply to the supervising pediatric physician’s activities on behalf of the board. The supervising pediatric physician is required by § 620.010.14(8) RSMo., to hold as privileged any information obtained in this engagement. The supervising pediatric physician is invested with the board’s trust and confidence and is expected to use professional judgment in exercising the responsibilities dictated by this order.

F. The supervising pediatric physician shall freely and openly consult with Dial regarding the practice of pediatric medicine. The supervising pediatric physician shall reduce to writing any recommendations necessary to ensure that Dial’s practice complies
with the laws and regulations governing the practice of podiatric medicine, and may make such other recommendations as are dictated by good practice. A copy of the written recommendations shall be filed with the board no later than the first business day after August 1, 2007.

G. Dial shall follow the written recommendations of the supervising podiatric physician necessary to ensure that his practice complies with the laws and regulations governing the practice of podiatric medicine, and is encouraged to follow the recommendations as to good practice. If Dial believes any recommendation is incorrect, ill-advised, or otherwise improper, he may petition the board for relief from such recommendation as a condition of this probation.

H. The supervising podiatric physician shall immediately notify the board of any condition or circumstance in Dial’s personal life or practice that, in the judgment of the supervising podiatric physician, endangers the health, life or safety of any person, including Dial.

I. The supervising podiatric physician shall make regular written reports to the board on the status of Dial’s practice. The reports shall inform the board of Dial’s compliance with the supervising podiatric physician’s recommendations and the quality of Dial’s practice. Such reports may be made at anytime, but shall be made no less often than quarterly.

J. Dial shall pay the reasonable fees of the supervising podiatric physician as agreed, or if there is no agreement for the timing of such payments, within 30 days of demand.
K. Should a supervising podiatric physician be unable to continue to discharge the responsibilities required by this order, Dsals shall immediately notify the board and submit a list of five recommended successors, with the same qualifications, as soon as possible.
As ordered by the board this 9th day of May, 2007.

STATE BOARD OF PODIATRIC MEDICINE

Becky Dunn
Executive Director