BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF PODIATRIC MEDICINE,

Petitioner,

v.

FRANKLIN L. FOWLER, D.P.M.

Respondent.

No. 00-0577 CP

JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS 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 15-2.450(1)) and pursuant to the terms of § 536.060, 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, additionally, the right
to a disciplinary hearing before the State Board of Podiatric Medicine under § 621.110,
RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary
action against the license of Respondent for violations of statutes set forth below.

Respondent acknowledges that he has received and reviewed a copy of the
Complaint filed by the State Board of Podiatric Medicine in this case and the parties
submit to the jurisdiction of the Administrative Hearing Commission.
Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; 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 Respondent by operation of law, Respondent, Franklin L. Fowler, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearings 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.

1

Based upon the foregoing, 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:

-2-
JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Podiatric Medicine ("Board") is an agency of the State of Missouri created and established pursuant to § 330.100, for the purpose of executing and enforcing the provisions of Chapter 330, RSMo.

2. Franklin L. Fowler, D.P.M. ("Respondent") is licensed by the Board as a podiatrist, license number 808, which was first issued on November 23, 1998. Respondent's license is current and active, and was current and active at all times mentioned herein.

3. At the time of the events alleged herein, Respondent primarily provided podiatry services to patients and residents of nursing homes or residential geriatric facilities in Missouri. Respondent did not maintain an office practice at the time of the events alleged herein.

4. From on or about November 23, 1998, until on or about July 5, 1999, Respondent wrote twenty-two prescriptions for propoxyphene napsylate ("Darvocet") for his wife, M.F.

5. From on or about November 24, 1998, until on or about June 30, 1999, Respondent wrote thirteen prescriptions for Darvocet for his stepson, J.F.

6. From on or about November 28, 1998, until on or about July 17, 1999, Respondent wrote twelve prescriptions for Darvocet for his daughter, H.B.

7. On or about July 24, 1999, and on or about August 11, 1999, Respondent wrote a prescription for Darvocet for D.G.
8. From on or about December 8, 1998, until on or about January 10, 1999, Respondent wrote four prescriptions for Darvocet for S.M.

9. Respondent did not share a podiatrist/patient relationship with any of the persons mentioned above in paragraphs 4 through 8.

10. The acts of prescribing of controlled substances by Respondent, described above in paragraphs 4 through 8, were outside the scope of Respondent’s professional practice as a podiatrist and did not occur in good faith.

11. A professional trust and confidence exists between Respondent and any individual to whom he prescribes a controlled substance in that such individuals rely on Respondent to prescribe controlled substances in good faith and in the course of his professional practice only.

12. Pursuant to § 195.017, RSMo 2000, Darvocet is a controlled substance.

JOINT PROPOSED CONCLUSIONS OF LAW

13. Respondent’s conduct in prescribing controlled substances to individuals with whom he did not share a podiatrist/patient relationship constitutes a violation of § 195.070, RSMo 2000, which states in pertinent part:

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.

14. Respondent’s conduct in prescribing controlled substances to individuals with whom he did not share a podiatrist/patient relationship constitutes incompetency.
misconduct, repeated negligence, and gross negligence in the performance of Respondent's functions and duties as a podiatrist.

15. Respondent's conduct in prescribing controlled substances to individuals with whom he did not share a podiatrist/patient relationship constitutes a violation of a professional trust and confidence.

16. Cause exists for Petitioner to take disciplinary action against Respondent's license under § 330.160.2(5), (13), and (15) RSMo 2000, 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 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(5) Incompetency, misconduct, repeated negligence, gross negligence ... 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 as a podiatrist, No. 808, is VOLUNTARILY SURRENDERED. Licensee shall immediately return all evidence of licensure to the State Board of Podiatric Medicine.

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

3. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Podiatric Medicine, and Consent Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by the Petitioner in the above-styled action.
4. Respondent 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

Franklin L. Fowler, D.P.M.

PETITIONER

Patricia Handly
Executive Director
State Board of Podiatric Medicine

JEREMIAH W. (JAY) NIXON
Attorney General

Jay R. Ambak
Assistant Attorney General
Missouri Bar No. 52349

7th Floor, Broadway State Office Building
221 West High Street
P. O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1444
Telefax: 573-751-5660

ATTORNEYS FOR PETITIONER
STATE BOARD OF PEDIATRIC MEDICINE, 

Petitioner,


vs.


FRANKLIN L. FOWLER, D.P.M., 

Respondent.

No. 00-0577/C

CONSENT ORDER

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

On April 3, 2001, the parties filed a "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Board of Pediatric 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. Backner, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under section 330.162.35(1), (13), and (15), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order under Regulation 1 CSR 15-2.450(1)(B). We certify the record to the licensing agency under section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. This is consistent with the holding that we have no role in superintending agency compliance with statutory procedures. Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.


SHARON M. BUSCH
Commissioner