BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF PODIATRIC MEDICINE,

Petitioner,

v.

ANTHONY L. HALINSKI, D.P.M.,

Respondent.

No. 00-1649 CP

JOINT STIPULATION OF FACTS, WAIVER OF HEARING BEFORE
THE ADMINISTRATIVE HEARING COMMISSION AND MISSOURI
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 1994, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1994, 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 § 621.119, RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the podiatrist 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.
The 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 entry 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 the Respondent by operation of law, Respondent, Anthony Halinski, DPM, 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 Missouri 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, the Petitioner and the 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

1. The State Board of Podiatric Medicine ("Board") is an agency of the State of Missouri created and established pursuant to § 339.106, for the purpose of executing and enforcing the provisions of Chapter 339, RSMo.

2. Anthony L. Halinski, D.P.M. ("Licensee") is licensed by the Board as a podiatrist, License No. 391. Licensee'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, Licensee practiced podiatric medicine at the St. Louis Foot & Ankle Center, Inc., in St. Louis, Missouri.

4. At the time of the events alleged herein, Licensee held medical staff membership and clinical privileges at Missouri Baptist Medical Center in St. Louis, Missouri.

5. Licensee's grant of clinical privileges entitled him to perform surgical procedures on patients.


7. Licensee examined J.C. and determined that his ankle was sprained and that ligaments on the lateral side of J.C.'s ankle were torn.

8. At the time of Licensee's examination of J.C., Licensee knew or had reason to know that one or more of J.C.'s injuries were at or slightly below the anterior talo-fibular ligament.


10. Licensee did not contact an orthopedic surgeon for evaluation of J.C.'s injuries.
11. Licensee performed surgery on J.C. on or about March 14, 1998.

12. According to Licensee’s grant of clinical privileges at the time of the conduct set forth in paragraphs 7 through 11, Licensee was prohibited from performing surgical procedures above a patient’s ankle.

13. According to Licensee’s grant of clinical privileges at the time of the conduct set forth in paragraphs 7 through 11, Licensee was required to contact an orthopedic surgeon in any case where it appeared that surgery above the ankle might be warranted.

14. Additionally, according to Licensee’s grant of clinical privileges at the time of the conduct set forth in paragraphs 7 through 11, if an orthopedic surgeon determined that surgery above the ankle was warranted, the surgery was required to be performed by the orthopedic surgeon, not by Licensee.

15. On or about February 5, 1999, the Board of Trustees of Missouri Baptist Hospital revoked Licensee’s medical staff membership and clinical privileges for his conduct set forth in paragraphs 7 through 11 in exceeding his grant of clinical privileges by performing surgery above J.C.’s ankle.

16. The standard of care for the practice of podiatry requires a podiatrist to perform surgery only within the limits of his clinical privileges.

JOINT PROPOSED CONCLUSIONS OF LAW.

17. Cause exists to discipline Licensee’s podiatrist license pursuant to § 330.160.2(13), RSMo Supp. 1999, which provides:

   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:

(13) Violation of any professional trust or confidence,

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 1994. 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:

I. Respondent’s License No. 791 is hereby placed on PROBATION for a period of one year. During the disciplinary period, Respondent shall be entitled to engage in the practice of podiatric medicine under Chapter 330 provided he complies with the following terms and conditions:

I. REQUIREMENTS REGARDING CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION:

A. Within 14 days of the effective date of this Joint Stipulation, Respondent shall, at Respondent’s cost, undergo an evaluation for chemical dependency by Dr. David Ohms of St. Joseph’s Hospital, Kirkwood, Missouri, or another chemical dependency professional approved, in writing, by the Board prior to evaluation.

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Respondent shall direct Dr. Ohms or any other approved chemical dependency professional to forward an evaluation report to the Board detailing the tests performed and test results, discussion of relevant clinical interview findings/interpretations, specification of DSM IV diagnoses, and discussion of appropriate treatment recommendations/plan within 15 days of completing the evaluation. If there is no diagnosis requiring treatment, this should be specified in the evaluation. Respondent shall follow any recommendations for treatment made by that chemical dependency professional.

B. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of controlled substances and dangerous drugs defined by state and federal law or any drugs requiring a prescription unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom the Respondent has a bona fide physician/patient relationship. The Respondent shall forward to the Board written documentation of any such prescription within ten days of the date of issuance of the prescription.

C. During the disciplinary period, Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of Respondent's discipline.

D. During the disciplinary period, Respondent shall cause a letter of evaluation from Dr. Ohms, any other approved chemical dependency professional or from the rehabilitation or aftercare program to be submitted to the Board no later than the first day of each month or as soon as is practical thereafter but not to exceed ten
days after the first of each month. The letter shall include an evaluation of the Respondent's current status in the treatment, including Respondent's compliance with all the recommendations for treatment, and the current prognosis.

E. Within ten days of the effective date of this Joint Stipulation, Respondent shall execute and deliver to the Board a written medical release(s) or other appropriate release(s) which shall cover the entire period of this Joint Stipulation authorizing the State Board of Podiatric Medicine to obtain records of Respondent's treatment for chemical dependency. Respondent shall not take any action to cancel the release(s) and shall take whatever actions are necessary to ensure that the release(s) remain in full force and effective throughout the disciplinary period.

F. During the disciplinary period, if participation in Alcoholics Anonymous, Narcotics Anonymous, or other support groups is recommended by Respondent's chemical dependency professional, Respondent shall submit evidence of attendance at the required meetings to the Board by the first day of each month. The documentation shall include the date, time, and place of meeting and shall bear the signature of the person moderating or facilitating the meeting confirming Respondent's attendance and presence throughout the duration of the meeting. However, if the person moderating or facilitating the meeting will not sign the documentation set forth above, then Respondent shall obtain a notarized statement from his sponsor verifying Respondent's attendance and participation in Alcoholics Anonymous, Narcotics Anonymous or other recommended support group.
G. If the treatment of Respondent is successfully completed during the disciplinary period, Respondent shall cease the treating chemical dependency professional or director of the chemical dependency treatment program to submit a letter of evaluation to the Board stating that Respondent has successfully completed treatment and the arrangements for appropriate follow-up or aftercare and shall document compliance with all such recommendations, if any are deemed necessary.

II. REQUIREMENTS REGARDING MENTAL HEALTH EVALUATION AND TREATMENT:

A. Within 14 days of the effective date of this Joint Stipulation, Respondent shall, at Respondent's cost, undergo a thorough evaluation performed by Dr. David Oblins or another licensed mental health professional approved, in writing, by the Board prior to evaluation. The evaluation shall be for any clinically significant disorder which poses any risk to the safe practice of podiatry. Respondent shall direct Dr. Oblins or any other approved licensed mental health professional to forward an evaluation report to the Board detailing the tests performed and test results, discussion of relevant clinical interview findings/interpretations, specification of DSM IV diagnoses, and discussion of appropriate treatment recommendations/plan within 15 days of completing the evaluation. If there is no diagnosis requiring treatment, this should be specified in the evaluation. Respondent shall follow any recommendations for treatment made by that chemical dependency professional.
B. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of controlled substances and dangerous drugs defined by state and federal law or any drugs requiring a prescription unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom the Respondent has a bona fide physician/patient relationship. The Respondent shall forward to the Board written documentation of any such prescription within ten days of the date of issuance of the prescription.

C. During the disciplinary period, Respondent shall cause a letter of evaluation from the licensed mental health professional or from the rehabilitation or aftercare program to be submitted to the Board no later than the first day of each month. The letter shall include an evaluation of the Respondent’s current status in the treatment, including Respondent’s compliance with all the recommendations for treatment, and the current prognosis.

D. Within ten days of the effective date of this Joint Stipulation, Respondent shall execute and deliver to the Board a written medical release(s) or other appropriate release(s) which shall cover the entire period of this Joint Stipulation authorizing the State Board of Pediatric Medicine to obtain records of Respondent’s mental health treatment. Respondent shall not take any action to cancel the release(s) and shall take whatever actions are necessary to ensure that the release(s) remain in full force and effective throughout the disciplinary period.

E. During the disciplinary period, if participation in a 12-step program or other support group attendance is recommended by Respondent’s treating mental health
professional, Respondent shall submit evidence of attendance at the required meetings to the Board by the first day of each month. The documentation shall include the date, time, and place of meeting and shall bear the signature of the person moderating or facilitating the meeting confirming Respondent’s attendance and presence throughout the duration of the meeting. However, if the person moderating or facilitating the meeting will not sign the documentation set forth above, then Respondent shall obtain a notarized statement from his sponsor verifying Respondent’s attendance and participation in a 12-step program or other recommended support group.

F. If the treatment of Respondent is successfully completed during the disciplinary period, Respondent shall cause the treating mental health professional or director of the treatment program to submit a letter of evaluation to the Board stating that Respondent has successfully completed treatment and the arrangements for appropriate follow-up or aftercare and shall document compliance with all such recommendations.

III. DRUG SCREENS

During the disciplinary period, Respondent shall, at Respondent’s cost, submit to biological fluid testing as required by the State Board of Podiatric Medicine. Respondent shall be given no more than 24 hours’ notice and no less than eight hours’ notice when a screen is to be performed. Respondent 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 that has not been forwarded to the Board
as provided in this Joint Stipulation shall constitute a violation of Respondent’s discipline.

IV. GENERAL REQUIREMENTS

A. During the disciplinary period, Respondent shall comply with all provisions of
   Chapters 330 and 195, PSMo; 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, Respondent shall keep the Board informed of
   Respondent’s current work and home telephone numbers and addresses.
   Respondent shall notify the Board in writing within ten days of any change in this
   information.

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

D. During the disciplinary period, Respondent shall accept and comply with
   unannounced visits from the Board’s representatives to monitor his compliance
   with the terms and conditions of this Joint Stipulation, so long as said
   unannounced visits do not interrupt Respondent’s patient schedule.

E. During the disciplinary period, Respondent shall appear in person for interviews
   with the Board or its designee upon request, upon no less than two weeks notice.
F. Respondent shall submit written reports to the Board no later than January 1 and July 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 Joint Stipulation. It is the Respondent’s responsibility to see that the reports are submitted. Failure of the Board to provide the reporting forms shall not relieve the Respondent of the obligation to make the required reports.

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

H. For purposes of this Joint Stipulation, unless otherwise specified in this Joint Stipulation, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this Joint Stipulation 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 Joint Stipulation understand that the Board will maintain this Joint Stipulation 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 Respondent has failed to comply with the terms of this Joint Stipulation, the Board may revoke Respondent’s permit or may take such other or additional disciplinary action against Respondent or Respondent’s license as the Board deems appropriate. No order shall be entered by the Board pursuant to this paragraph of this consent order 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, Respondent’s podiatric license in Missouri shall be fully restored if all other requirements of law have been satisfied.

5. If the Board determines that Respondent has violated a term or condition of this Joint Stipulation, 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, Respondent agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this agreement has occurred.

6. 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 Missouri 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.

7. 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.

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RESPONDENT

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Before the
Administrative Hearing Commission
State of Missouri

STATE BOARD OF PODIATRIC MEDICINE,

Petitioner,

vs.

ANTHONY L. HALINSKI, D.P.M.,

Respondent.

No. 00-1649 CP

CONSENT ORDER

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

On April 9, 2001, the parties filed a “Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and Missouri 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 license is subject to discipline under section 350.160.2(1), RSMo Supp. 1999. We incorporate the parties’ proposed findings of fact and conclusions of law into this Consent Order under Regulation 1 CSR 15-2.450(7)(D). We certify the record to the licensing agency under section 631.110, 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 supervising agency compliance with statutory procedures. _Missouri Health Facilities Review Comm’r v. Administrative Hearing Comm’n_, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.


WILLARD C. KEINE
Commissioner