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11-09-00

Final Order No. DOH-01-0198- FOF.MQA
FILED DATE - 2/21/01
Department of Health

By: Victi R. Kenon
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF PODIATRIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

GEORGE C.P. MCNALLY,

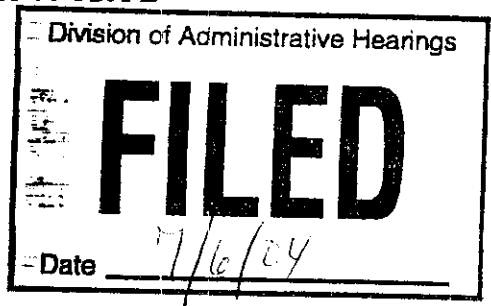
Respondent.

_____ /

AP

00-3259
DOAH Case 00-325PL

HLH-1105



FINAL ORDER

This cause came before the Board of Podiatric Medicine pursuant to Section 120.569 and 120.57(1), Florida Statutes, on December 22, 2000, by telephone conference call for the purpose of considering the Recommended Order and a letter from Respondent construed as exceptions to the recommended order (copies of which are attached hereto as Exhibits A and B respectively). Petitioner was represented by Wings Benton, Attorney at Law. Respondent was present and self represented.

Upon review of the Recommended Order, the additional letter from Respondent, argument of the parties, and after review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

The Administrative Law Judge found that Respondent violated all four counts alleged in the administrative complaint. He recommended six months suspension of Respondent's license, a \$2000 fine, and payment of the costs of investigation and prosecution to be assessed at the time the Board considers the recommended order.

The costs of investigation and prosecution totalled \$17,912.64.

Respondent indicated he could not pay any fines or costs within six months. While this was couched in a letter the Board considered as an Exception, it was more in the nature of a request to alter the penalty. He also suggested that the finding in paragraph 57 was wrong concerning his being in practice for four years. Respondent only practiced a little more than one year as a podiatrist.

Both Petitioner and Respondent concurred that part of paragraph 13 was in error that Respondent would telephonically call in presumptions.

The Board voted to delete "to a pharmacy telephonically" from paragraph 13 as not being supported by competent substantial evidence.

Petitioner urged that the Administrative Law Judge placed too much emphasis on mitigation concerning Respondent's youth and short length of practice.

The Board was very troubled by these offenses and Respondent's complete lack of appreciation that his actions were clearly outside the scope of practice, not in the best interests of his patients, involved drugs that could kill, and involved falsification of medical records. Further these events occurred over an extended period of time. Respondent never consulted with a more experienced colleague or referred patient BR to a specialist when his condition never improved. While some Board members wanted permanent revocation, it concluded that unfortunately there may be cases more dangerous and egregious which would warrant such action.

Throughout its review of the Respondent's testimony and his documentation to both the Administrative Law Judge, it was apparent that Respondent just "didn't get it," concerning the serious nature of his actions. These factors go to the lack of efforts at rehabilitation, the

licensee's actual knowledge of the violation, and the lack of attempts to correct the violations, all factors in Rule 64B18-14.003, F.A.C.

Although the Administrative Law Judge considered Respondent's lack of prior disciplinary action, it was based on the erroneous belief he had practiced for four years not one year. That Respondent had multiple offenses of a serious nature in his short time while licensed poses a very serious risk to patients.

The Board further notes that Petitioner's request for more suspension time to pay fines and costs. It does not appear the Administrative Law Judge considered this factor in his recommendation for there was no indication the costs would exceed \$17,000. Nor did it appear he considered Section 461.013(3), Florida Statutes, that the license cannot be reinstated until the Board is satisfied the individual complied with all terms of the final order and that such person is capable of safely engaging in the practice of podiatric medicine.

The Board strongly suggests that during his period of suspension Respondent should take continuing education in such areas as legal and medical ethics, risk management, medical recordkeeping, and legal issues involving prescriptions of controlled substances to increase his awareness of very basic responsibilities in the practice of podiatric medicine.

Due to the seriousness of the offenses and for the reasons above, the board voted to increase the \$2000 fine (presumably \$500 per count) to \$4000 (\$1000 per count) and extend the suspension period from six months to one year with the requirement the \$4000 fine and \$17,912.64 costs be paid before reinstatement.

FINDINGS OF FACT

1. The Findings of Fact set forth in the Recommended Order paragraphs 1-48 are

approved, adopted, and incorporated by reference except for the stipulation modification of paragraph 13 to delete the language "to a pharmacy telephonically."

2. There is competent substantial evidence to support the Findings of Fact of the Administrative Law Judge.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes.

2. The Board accepts the conclusions of law in paragraphs 49-56 and paragraph 57 to the extent it was not modified by the findings in rulings on exceptions.

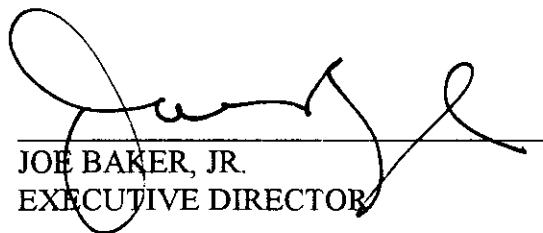
DISPOSITION

The license to practice podiatric medicine of George C. P. McNally is suspended for one year and thereafter until he pays \$17,912.64 in costs, a \$4000 administrative fine, and appears before the Board to demonstrate complete compliance with this order and can demonstrate he is capable of safely engaging in the practice of podiatric medicine.

This Order takes effect upon filing with the Clerk of the Department of Health.

Done and Ordered this 5 day of Feb, 2001.

BOARD OF PODIATRIC MEDICINE



JOE BAKER, JR.
EXECUTIVE DIRECTOR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of the Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fee prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served by certified mail to George C.P. McNally, P.O. Box 5585, Destin, FL 32540, and by interoffice mail to Harry L. Hooper, Administrative Law Judge, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060, Wings S. Benton and Simone Marsteller, Office of the General Counsel, MQA, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 33317, this _____ day of _____, 2001.