

**BEFORE THE MINNESOTA
BOARD OF PODIATRIC MEDICINE**

In the Matter of the
Medical License of
Robert Mullin, D.P.M.
License Number: 507

**FINDINGS OF FACT,
CONCLUSIONS, AND
FINAL ORDER**

The above-entitled matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Board Complaint Review Committee (“CRC”) on March 13, 2012. A prehearing conference took place on May 4, 2012. Geoffrey Karls, Assistant Attorney General, represented the CRC. Robert Mullin, D.P.M. (“Respondent”), appeared pro se. The matter was scheduled for a contested case hearing on January 7, 2013, before Administrative Law Judge (“ALJ”) Raymond R. Krause, at the Office of Administrative Hearings (“OAH”) in St. Paul, Minnesota.

On December 12, 2012, the ALJ issued an Order for Partial Summary Disposition (“ALJ’s report”), recommending the Board take disciplinary action against Respondent’s medical license, based upon violations of Minnesota Statutes section 153.19, subdivisions 1(7) and (16). (A true and accurate copy of the ALJ’s report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on March 4, 2013, in the University Room, on the first floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Geoffrey Karls, Assistant Attorney General, appeared and presented oral argument on behalf of the CRC. Respondent made no appearance. Board members Stephen Powless, DPM, and Judy Swanholm did not participate in deliberations and did not vote in the matter.

Ruth Grendahl, the Board's Executive Director, did not participate in the deliberations. Benjamin R. Garbe, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the December 12, 2012 ALJ's report. Based on that report, the Board hereby issues the following Findings of Fact:

1. Beginning in 2002, Respondent conducted a test known as a Pressure Specified Sensory Devise ("PSSD") neurological examination on many of his patients, ostensibly to detect peripheral neuropathy. Respondent did not obtain signed Advanced Beneficiary Notices (ABN) from his patients prior to administering these tests. A signed ABN is required when a patient will be expected to pay for a non-covered procedure. Respondent was typically reimbursed anywhere from \$300 to \$600 to administer PSSD exams.

2. On October 29, 2008, Medica Health Plans ("Medica"), a health insurance carrier that had a contractual relationship with Respondent, sent him a letter indicating that he had been inaccurately billing Medica for PSSD exams under a code reserved for a different type of service. Medica further informed Respondent that PSSD exams had not been a covered service since March 1, 2007, and that Respondent's inaccurate billing of PSSD exams had resulted in payment from Medica to Respondent for services that were not eligible for coverage. Accordingly, Media requested reimbursement of \$45,712.50 it had paid Respondent for PSSD exams after March 1, 2007.

3. On November 24, 2008, Respondent's attorney appealed Medica's determination, and Medica rejected the appeal by letter dated February 17, 2009. Respondent's attorney offered, by letter, to settle the overpayment determination for \$24,000 on July 10, 2009. Medica

rejected this offer. In response to another request for reconsideration, Medica sent Respondent's attorney a letter on October 30, 2011, further outlining Medica's basis for demanding repayment of the full \$45,712.50 in charges inaccurately submitted by Respondent. When Respondent failed to respond to the October 30 letter, Medica began offsetting Respondent's claim submissions, and as of January 5, 2011, Medica had recouped \$25,194 in this manner.

4. Meanwhile, HealthPartners, another health insurance carrier that had a contractual relationship with Respondent, was alerted to Respondent's mischaracterization of PSSD examinations in claims he had submitted. HealthPartners determined that Respondent had been incorrectly reimbursed \$48,048.51 by HealthPartners since the beginning of 2006. Accordingly, HealthPartners began offsetting Respondent's claim submissions as well, and had recouped all but \$6,101.73 by February 15, 2010.

5. On December 8, 2010, Respondent's office sent identical letters to 470 patients. The letters were sent to all of Respondent's patients who were covered by Medica or HealthPartners, and who had received PSSD examinations between January 1, 2003, and October 3, 2008. The Demand Letter read, in pertinent part, as follows:

During a past visit, a PSSD neurosensory test was performed to assess the sensory status of the nerves in your feet. The official billing procedure code was 95937 and the original charge was \$1600. *Your insurance initially paid for the claim, but after reviewing the code, they took the money back and informed us that you would be responsible for any charges.* I am willing to write off a substantial portion of the original charge, \$1000, leaving the balance owed for the test at \$600...Please send payment by [12/31/10]...(emphasis added).

6. Of the 470 patients who received this letter, roughly 250 had not even received a PSSD exam during the time period for which Medica and HealthPartners were seeking reimbursement. By sending these letters, Respondent sought payments totaling \$282,000.00 (470 patients X \$600 each), notwithstanding the fact that the total reimbursement sought by Medica and HealthPartners was only \$93,712.50. Respondent's conduct also ignored the fact

that his provider contracts with both Medica and HealthPartners required Respondent to obtain signed Advanced Beneficiary Notices from patients prior to administering any non-covered services if Respondent wished to bill the patients for such services.

7. On December 22, 2010, Medica contacted Respondent via letter, demanding that Respondent cease and desist any attempts at collecting money from Medica members relative to the disallowed PSSD claims. In its letter, Medica pointed out that Medica had never informed Respondent that his patients would be responsible for the recouped charges, and that Medica had never "down adjusted" any patient's specific claims. Medica also pointed out that Respondent had never obtained signed Advanced Beneficiary Notices from its members prior to administering the non-covered PSSD exams, as required by his provider agreement. Lastly, Medica pointed out that Respondent had sent the letter to patients who had undergone PSSD exams prior to March 1, 2007, the date from which Medica began disallowing the PSSD exam claims.

8. On January 18, 2011, Respondent was contacted by representatives of the Minnesota Attorney General's Office, who had been alerted to the Demand Letter by complaints from citizens who had received the letter. Respondent indicated that he would send a retraction letter to everyone who had been sent the Demand Letter if the Attorney General's Office and the Board of Podiatric Medicine agreed to take no further action relative to the Demand Letter.

9. On January 21, 2011, six week after sending the Demand Letter, Respondent sent a retraction letter to all Medica patients who had received PSSD exams prior to March 1, 2007. On February 1, 2011, Respondent sent retraction letters to the remainder of the patients who had been sent the Demand Letter. Respondent also refunded money he had received from patients pursuant to the Demand Letter.

10. On December 12, 2012, the ALJ issued a report recommending that disciplinary action against Respondent's medical license was in the public interest. On December 24, 2012, the ALJ certified this recommendation as a final decision pursuant to Minnesota Rule 1400.7600.

CONCLUSIONS

The Board accepts the December 12, 2012 ALJ's report. Based on that report, the Board hereby issues the following Conclusions:

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes sections 153.19, 214.10, and 214.103.

2. The CRC gave proper notice of the alleged violations to Respondent and fulfilled all procedural requirements of law and rule so that this matter is properly before the Board.

3. Pursuant to Minnesota Statutes section 153.19, subdivision 1, the Board may refuse to grant a license or may impose disciplinary action against any doctor of podiatric medicine.

4. The CRC has the burden of proof in this proceeding and must establish the facts at issue by a preponderance of the evidence as provided by Minnesota Rules 1400.7300, subpart 5.

5. The CRC has proved by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 153.19, subdivisions 1(7) and (16).

6. As a result of the violations set forth above, the Board has the power to take disciplinary action against Respondent's license to practice medicine pursuant to Minnesota Statutes sections 153.19, and 153.22.

ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

A. Revocation

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice podiatric medicine in the State of Minnesota is **REVOKED**. Respondent shall not engage in any act which constitutes the practice of podiatric medicine as defined in Minnesota Statutes section 153.01, subd. 2, and shall not imply by words or conduct that Respondent is authorized to practice podiatric medicine.

2. IT IS FURTHER ORDERED that Respondent shall surrender to the Board his license. Respondent shall personally deliver or mail the certificate to the Minnesota Board of Podiatric Medicine, c/o Ruth Grendahl, Executive Director, 2829 University Avenue S.E., Suite 430, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

B. Application for Relicensure

3. IT IS FURTHER ORDERED that Respondent may apply for relicensure after a minimum of five (5) years from the date of this Order. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that he is capable of practicing podiatric medicine in a fit, competent, and ethical manner. At the time of Respondent's application, Respondent shall comply with, at a minimum, the following:

a. Respondent shall submit a completed application for licensure, pay the licensure fee, and meet all other licensure requirements in effect at the time of application.

b. Respondent shall provide any additional information relevant to his application reasonably requested by the Board.

4. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 153.22, subdivision 1(4), when Respondent applies for relicensure, he must pay to the Board a **CIVIL PENALTY** of **\$15,000**, to reimburse the Board for costs of the proceedings which resulted in the revocation of his license, including the costs paid by the Board to the Office of Administrative Hearings and to the Attorney General's Office for its investigation, and to discourage future violations. The civil penalty shall be paid by cashier's check(s) or money order(s) made payable to the Minnesota Board of Podiatric Medicine, c/o Ruth Grendahl, Executive Director, 2829 University Avenue S.E., Suite 430, Minneapolis, Minnesota 55414.

5. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute the violation of a Board order for purposes of Minnesota Statutes section 153.19, subdivision 1(6), and provide grounds for further disciplinary action.

6. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's application for relicensure pursuant to paragraph 4 above, take any of the following actions:

- a. Issue a license to Respondent;
- b. Issue a license to Respondent with limitations upon the scope of Respondent's practice and/or with conditions for Respondent's practice; or
- c. Deny Respondent a license based upon his failure to meet the burden of proof.

Dated: March 7, 2013

MINNESOTA BOARD
OF PODIATRIC MEDICINE


EUGENE L. DELA CRUZ, DPM