

**FOR THE MINNESOTA
BOARD OF PODIATRIC MEDICINE**

In the Matter of the License of
Dale Vancil, D.P.M.
License No. 388

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

The above-entitled matter came on for a prehearing conference on May 16, 2013, before Administrative Law Judge (“ALJ”) Jeanne M. Cochran, at the request of the Minnesota Board of Podiatric Medicine (“Board”) Complaint Resolution Committee (“Committee”). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Committee on March 4, 2013. Hans A. Anderson, Assistant Attorney General, represented the Committee. Dale Vancil, D.P.M. (“Respondent”), made no appearance.

On June 10, 2013, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation (“ALJ’s report”), recommending the Board take disciplinary action against Respondent. (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 August 12, 2013, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Hans A. Anderson, Assistant Attorney General, appeared on behalf of the Committee. Respondent appeared on his own behalf. Board Members Stephen H. Powless, D.P.M., and Margaret Schreiner did not participate in deliberations and did not vote in the matter. Ruth Grendahl, Executive Director of the Board, did not participate in the deliberations.

Gregory J. Schaefer, Assistant Attorney General, was present as legal advisor to the Board.

During the Board hearing on August 12, 2013, Respondent stated his previous office manager prevented all Board messages and correspondence from being brought to his attention. Respondent did not realize the Board had attempted to contact him until August 9, 2013.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the June 10, 2013, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 8 of the ALJ's Findings of Fact lays out the allegations contained in the Notice of Hearing and paragraph 5 of the ALJ's Conclusions of Law states,

Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the [Notice of Hearing] may be taken as true and deemed proved. The [ALJ] therefore deems the allegations to be true.

The allegations contained in the Notice of Hearing, and as stated in the ALJ's Findings of Fact, are as follows:

1. Respondent was licensed by the Board to practice podiatric medicine and surgery on March 13, 1985.
2. On July 13, 2009, Respondent treated Patient #1. Respondent failed to timely submit a claim to Medicare and to Patient #1's secondary insurance provider despite Patient #1's continued efforts to remind Respondent to do so. Respondent then falsely indicated to Patient #1 that Medicare and her secondary insurance provider had denied coverage for her treatment.
3. In, or around, July 2010, Respondent billed Patient #1 individually for the July 13, 2009, treatment.
4. In a letter dated August 27, 2010, Respondent warned Patient #1 she would be sent to "outside collection" with an added \$100 service charge if her bill was not paid within ten

days. Respondent did not advise Patient #1 that “outside collection” was a collection agency he, himself, owned.

5. Upon receipt of the August 27, 2010, letter, Patient #1 contacted Respondent to dispute his handling of her insurance claim and Respondent’s office manager assured her the claim would be filed that day, but it was not.

6. On September 2, 2010, Patient #1 attempted to contact Respondent again but was told by Respondent’s office manager she would not be allowed to speak with Respondent because he was “always either with patients or out to lunch.” On September 3, 2010, Patient #1 called Respondent’s office in the evening and the phone switched over to Respondent’s cell phone. Patient #1 explained the billing problem to Respondent who stated he would deal with the situation.

7. In, or around, fall 2010, Respondent filed a claim with Medicare and Patient #1’s secondary insurance provider, but changed the date of service on the claim from July 13, 2009, to July 13, 2010. Medicare and Patient #1’s secondary insurance provider granted coverage and Respondent accepted payment.

8. On April 23, 2012, the Board served Respondent a Notice of Conference, scheduling a conference for May 23, 2012, to discuss the allegations contained in the Notice.

9. On May 21, 2012, Respondent e-mailed the Board, stating he would be unable to attend the May 23, 2012, conference because he was scheduled to be in the hospital getting a pacemaker put in that day. The Board rescheduled the conference to June 18, 2012.

10. On June 18, 2012, Respondent e-mailed the Board, stating he would be unable to attend the conference because he had come down with the stomach flu. The Board rescheduled the conference to September 10, 2012.

11. Respondent failed to attend the September 10, 2012, conference or to notify the Board he would be unable to attend. On September 11, 2012, the Board called Respondent and Respondent's office manager answered. Respondent's office manager told the Board Respondent had tried to make the September 10, 2012, conference. The Board asked to speak directly with Respondent, but was told he was unavailable. Respondent never returned the call.

12. On November 19, 2012, the Board reviewed Respondent's website at www.northsuburbspodiatry.com/1_our_doctors.php. Respondent's website lists a physician's assistant on staff but does not list the name of a physician under whom the physician's assistant is working.

13. Throughout the fall of 2012, the Board made numerous attempts to contact Respondent but was told each time by Respondent's staff that Respondent was either out sick or with a patient. Another one of Respondent's office managers told the Board Respondent would attend a conference if he could be allowed to attend by phone. The Board, therefore, rescheduled the conference a fourth time to December 21, 2012.

14. On December 18, 2012, the Board e-mailed Respondent to remind him of the December 21, 2012, conference and requested he call the Board. Respondent did not respond.

15. Respondent failed to attend the December 21, 2012, conference or to notify the Board he would be unable to attend.

CONCLUSIONS

The Board accepts the June 10, 2013, ALJ's report and accordingly adopts and incorporates the Conclusions therein. Based on the foregoing, the Board concludes that Respondent has committed the following violations:

1. Engaging in unethical conduct, including conduct likely to deceive, defraud, or harm the public, or conduct demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or the practice of podiatric medicine in a manner that is professionally incompetent, such that it may create unnecessary danger to any patient's life, health, or safety, in violation of Minn. Stat. § 153.19, subdivision 1(7).

2. Aiding or abetting an unlicensed person in the practice of podiatric medicine, in violation of Minn. Stat. § 153.19, subdivision 1(9).

3. Engaging in unprofessional conduct, including any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice, in violation of Minn. Stat. § 153.19, subdivision 1(11).

4. Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws, in violation of Minn. Stat. § 153.19, subdivision 1(16).

5. Failure to make reports or to cooperate with an investigation of the Board, in violation of Minn. Stat. § 153.19, subdivision 1(20), and Minn. Stat. § 153.20.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respondent to practice podiatric medicine in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time. The suspension is **STAYED** so long as Respondent complies with the following requirements:

2. IT IS FURTHER ORDERED that Respondent shall pay a **CIVIL PENALTY** in the amount of \$17,500.00. The Board has determined a civil penalty is appropriate based on the facts herein and will serve to discourage repeated violations. The civil penalty of \$17,500.00, shall be paid by cashier's check or money order made payable to the Minnesota Board of Podiatric Medicine and shall be delivered personally or delivered by mail to the Minnesota Board of Podiatric Medicine, c/o Ruth Grendahl, Executive Director, 2829 University Avenue S.E., Suite 430, Minneapolis, Minnesota 55414, no later than 60 days following the date of this Order.

3. IT IS FURTHER ORDERED that Respondent may petition the Board for removal of the stayed suspension from his license following six months 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 conducting himself in a fit, competent, and ethical manner in the practice of podiatric medicine. In petitioning for removal of the stayed suspension, Respondent shall comply with or provide the Board with, at a minimum, the following:

a. Website. Within 30 days of the date of this Order, inaccuracies in Respondent's website (www.northsuburbspodiatry.com/1_our_doctors.php) shall be corrected, including but not limited to representations of a physician assistant on staff without the name of a physician under whom the physician assistant is working.

b. Collection Agency. Within 30 days of the date of this Order, Respondent shall cease engaging in the use of a collection agency in which he has a financial interest in the billing practices of patients receiving podiatric treatment.

c. Health Care Provider. Within 90 days from the date of this Order, Respondent shall submit a report from any health care provider whom Respondent has consulted

for physical health, mental health, or chemical dependency treatment during the preceding 12 months. Each report shall provide and address:

- 1) Verification the health care provider has reviewed this Order;
 - 2) Identification of diagnoses and any plans of treatment, including medications, devised for Respondent;
 - 3) Respondent's progress with therapy and compliance with the treatment plan;
 - 4) A statement regarding Respondent's mental health status;
 - 5) Recommendations for additional treatment, therapy, or monitoring;
- and
- 6) Any other information the healthcare provider believes would assist the Board in its ultimate review of this matter.

d. Continuing Education. Within six months from the date of this Order, Respondent shall submit to the Board evidence of completion of at least five hours of continuing education on the topic of ethics in podiatric medicine and at least five hours of continuing education on the topic of practice management in podiatric medicine with focuses on patient billing and compliance with Medicare. Respondent must receive course preapproval from the Board's Executive Director prior to attending the course(s). No online courses will be approved. Respondent shall submit to the Board's Executive Director written documentation, such as measurable learning objectives and qualifications of the instructor, in fulfillment of this requirement.

e. Waivers. If requested by the Board at any time during the petition process, Respondent shall complete and sign health records waivers and/or chemical dependency

treatment records waivers supplied by the Board to allow representatives of the Board to discuss Respondent's case with and to obtain written evaluations and reports and copies of all of Respondent's health, mental health, and/or chemical dependency records from his physician, mental health professional/therapist, chemical dependency counselor, or others from whom Respondent has sought or obtained treatment, therapy, support, or assistance.

f. Additional Information. Any additional information relevant to Respondent's petition reasonably requested by the Board's Complaint Resolution Committee.

4. 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.

5. IT IS FURTHER ORDERED that it is Respondent's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Order are timely filed by those preparing the report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Order.

6. IT IS FURTHER ORDERED that if the Committee has probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraphs 2 and 3 above, the Committee may remove the stayed suspension pursuant to the procedures outlined in paragraph 7 below, with the following additions and exceptions:

a. The removal of the stayed suspension shall take effect upon service of an
Order of Removal of Stayed Suspension ("Order of Removal"). Respondent agrees that the Committee is authorized to issue an Order of Removal, which shall remain in effect and shall

have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 7 below. The Order of Removal shall confirm the Committee has probable cause to believe Respondent has failed to comply with or has violated one or more of the requirements for staying the suspension of Respondent's license. Respondent further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Respondent waives any right to a hearing before removal of the stayed suspension.

b. The Committee shall schedule the hearing pursuant to paragraph 7.a. below to be held within 60 days of the notice.

7. IT IS FURTHER ORDERED that if Respondent fails to comply with or violates this Order the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least 20 days before the hearing, the Committee shall mail Respondent a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, Respondent shall submit a written response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Committee, in its discretion, may schedule a conference with Respondent prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

c. Prior to the hearing before the Board, the Committee and Respondent may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Respondent may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Order. Unless stated otherwise in this Order, the Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Respondent has failed to submit a timely response to the allegations, Respondent may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Respondent waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Respondent's correction of a violation prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while Respondent's license is suspended or the suspension is stayed.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional requirements for the stayed suspension, removal of the stayed suspension, an additional period of suspension, or revocation of Respondent's license.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Respondent's license pursuant to Minnesota Statutes section 153.22, subdivision 2, based on a violation of this Order or based on conduct of Respondent not specifically referred to herein. Similarly, nothing herein shall limit the Committee's or the Board's right to automatically suspend Respondent's license pursuant to Minnesota Statutes section 153.22, subdivision 4.

8. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for removal of the stayed suspension from his license, take any of the following actions:

- a. Issue an unconditional license to Respondent.
- b. Issue a license to Respondent with limitations placed upon the scope of Respondent's practice and/or conditional upon further reports to the Board.
- c. Continue the stayed suspension of Respondent's license upon his failure to meet the burden of proof.

Dated: 9/17/2013

MINNESOTA BOARD OF
PODIATRIC MEDICINE


EUGENE L. DELACRUZ, D.P.M.
Board Vice-President