

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PODIATRIC MEDICINE

In the Matter of the License of
William F. White, D.P.M.,
Date of Birth: 8-17-34,
License Number.: 310

ORDER DENYING
MOTION TO DISMISS

By a written motion filed on July 15, 1996, William F. White, D.P.M. ("Dr. White" or "the Respondent") seeks a recommendation for dismissal of this matter. The Discipline Committee of the Board of Medical Podiatric Medicine (the "Discipline Committee") filed a Memorandum in Opposition to the Motion to Dismiss on July 29, 1996.

William F. White, 2310 West 41st Street, Sioux Falls, South Dakota 57105, represents himself in this proceeding. The Discipline Committee is represented by David E. Flowers, Assistant Attorney General, Suite 500, 525 Park Street, St. Paul, Minnesota 55103-2106.

Based upon the Memoranda filed by the parties, all of the filings in this case, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that the Respondent's Motion to Dismiss is DENIED.

Dated this 29th day of July 1996.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Respondent seeks dismissal of this contested case proceeding on the grounds that the Board of Podiatric Medicine no longer has jurisdiction over him. He argues that this is the case because on May 9, 1996, he voluntarily terminated his license rather than renew it upon its expiration on June 30, 1996. Dr. White argues that since he is no longer licensed, the Board lacks authority to bring this disciplinary proceeding.

The Respondent has been licensed by the Board since June 25, 1975. The subject matter of the allegations against the Respondent by the Complaint Committee were first discussed in a conference on July 15, 1994. The parties continued to try to reach a resolution of the matter. When they were unable to do so, the Notice of Hearing in this matter, which is dated June 27, 1996, was served upon the Respondent by mail. After the Respondent sent his letter of May 9, 1996, seeking voluntary termination of his license, the Board staff sent a letter to Dr. White advising him that his request for termination would not be granted due to unresolved disciplinary proceedings.

The Discipline Committee argues that since the Board denied Dr. White a voluntary termination, the Respondent's license was current when this contested case proceeding was initiated on June 27, 1996. It argues that the Respondent retains a right to reinstatement of that license under Minn. Rule pt. 6900.0210, and points out that accepting the Respondent's argument would subvert the statutory disciplinary process since any licensee could prevent disciplinary action by voluntarily terminating licensure and could then presumably reapply without consequence.

The Committee's reasoning is persuasive and is supported by the case law it cites in its Memorandum. In disciplinary actions against attorneys, the Minnesota Supreme Court has held that attorneys cannot resign their licenses while disciplinary proceedings are pending against them. Disciplinary Action against McCoy, 447 N.W.2d 887 (Minn. 1989). The courts in other states have held that licensees such as dentists and medical doctors are subject to disciplinary proceeding even though they attempt to voluntarily surrender their license after the initiation of proceedings to discipline. Cross v. Colorado State Board of Dental Examiners, 552 P.2d 38, 40-41 (Colo. App. 1976); Davidson v. D.C. Board of Medicine, 562 A.2d 109 (D.C. App. 1989).

It seems clear that the Board has authority to accept or reject the Respondent's tendered surrender of his license according to the case law cited. Accordingly, Dr. White was licensed until June 30, 1996, at which time his license expired since it was not renewed. This proceeding was initiated three days prior to that expiration. The Administrative Law Judge is persuaded that the legislative intent in establishing

licensure by the Board under Minn. Stat. § 153.16, and in setting out the grounds for disciplinary action in Minn. Stat. § 153.19, would be frustrated by permitting a licensee to avoid disciplinary action simply by submitting a voluntary termination of his license, or by allowing his license to lapse when disciplinary action was pending. This is especially true where the Board's rules permit a former licensee to apply for reinstatement. It is therefore appropriate that this matter proceed and the motion is denied.

G.A.B.