

Before the
New Hampshire Board of Registration in Podiatry
Concord, New Hampshire 03301

In the Matter of:)
)
Gaspare Stephen Minaudo, D.P.M.) Docket No. 87-001
License No. 0143)

DECISION

By the Board: Chris Panagoulis, D.P.M., chairman; Leon Hickey, D.P.M., E. Paul Fachada, D.P.M., and Roderick Bachmann, D.P.M., members. Kevin Monahan, public member, did not participate.

Appearance: Thomas Keane, Esq., for the Respondent.

Background

This is a disciplinary proceeding conducted by the New Hampshire Board of Registration in Podiatry ("the Board") under RSA 315:9 for the purpose of examining allegations of "unprofessional conduct" against G. Stephen Minaudo, D.P.M. ("Respondent"). These allegations were based upon a September 18, 1987 complaint filed by Harry L. Rappaport of Stratham, New Hampshire.^{1/}

A Notice of Hearing was served November 2, 1987 which specified four principal issues to be examined by the Board:

- 1) Whether Dr. Minaudo failed to adhere to a binding estimate of charges or otherwise assessed an unreasonable fee for treating Mr. Rappaport

^{1/} Mr. Rappaport subsequently elected not to assume the status of a party in this proceeding, but did participate as a witness at the hearing.

- 2) Whether Dr. Minaudo unfairly induced Mr. Rappaport to sign a promissory note to secure the unpaid balance of his account
- 3) Whether Dr. Minaudo imposed an unreasonable service charge against Mr. Rappaport or otherwise engaged in unfair fee collection practices in connection with his account
- 4) Whether, in a setting other than his own office, Dr. Minaudo verbally or physically abused Mr. Rappaport in a context relevant to their doctor-patient relationship

A hearing was held in Concord, New Hampshire, on December 4, 1987, at which Dr. Minaudo appeared and gave testimony. Testimony was also provided by Mr. Rappaport and by Ms. Linda Lee, Dr. Minaudo's office administrator.

Following the hearing, the Board concluded that additional information was necessary to resolve Issue No. 3 in an adequate manner. Consequently, a supplemental hearing was scheduled for March 11, 1988, and the Respondent was requested to produce additional information. On March 4, 1988, however, the Board met informally with Dr. Minaudo during a state-wide podiatry meeting, where he voluntarily agreed to provide information concerning his contractual understanding with Credit Services of NH/D (a collection agency) and that organization's attempts to collect \$600 and then \$750 from Mr. Rappaport when the balance on Mr. Rappaport's account was only \$500. Following the receipt of this information, the supplemental hearing was cancelled.

Findings of Fact

The Respondent was licensed to practice podiatric medicine in New Hampshire in 1980, and has operated a practice in the city of Portsmouth since that time. He was the subject of a 1985 disciplinary proceeding concerning his handling of a patient's account and insurance claims, but no disciplinary action was taken as a result of that hearing.

Harry Rappaport is a college educated adult who moved to New Hampshire from Massachusetts in early 1987. He sought services from the Respondent for the first time on April 23, 1987, after experiencing foot pain while running in the Boston Marathon. He knew he would be charged \$35 for an office visit, but did not enter the Respondent's office with a definite idea of what type of treatment would be recommended or performed, or what the charge for such treatment might be. After examining Mr. Rappaport, Dr. Minaudo recommended the surgical removal of the nails of both second toes, but did not advise him what this procedure would cost. Mr. Rappaport agreed to the surgery. Although he assumed there would be some additional charge for it, he did not ask what that charge would be. The Respondent proceeded to perform the surgery. Mr. Rappaport had no complaint about the medical results obtained by Dr. Minaudo, but was dissatisfied with the amount of his surgical fee.

Dr. Minaudo charged the Respondent the following fees for the services performed on April 23, 1987:

\$500 -- surgical nail removal (\$250 each second toe)
\$ 35 -- examination (new patient)
\$ 25 -- surgical tray
\$560 Total

A bill was presented to Mr. Rappaport before he left Dr. Minaudo's office and he was requested to pay in full that day. There was a sign in the Respondent's waiting room stating that accounts must be settled at the time services were rendered. Prior to the surgery, however, no one had actually told Mr. Rappaport that he would be required to pay -- or make definite arrangements for paying -- the entire cost of the surgery before he left the office on April 23, 1987.

Mr. Rappaport was unemployed in April 1987 and became distressed when he learned that he had incurred an unexpected obligation to pay \$525 for the surgery. The Respondent's office manager (Ms. Linda Lee) discussed various options for paying the fee with Mr. Rappaport on April 23, 1987, including the option of signing a promissory note. Mr. Rappaport felt angry, and was not especially cooperative.

Ms. Lee spoke firmly with Mr. Rappaport on April 23, 1987 concerning his obligation to pay the entire outstanding balance, but did not unfairly pressure him into signing the promissory note as opposed to making other arrangements for payment. He finally decided to pay \$60 immediately and signed a crudely fashioned promissory note for \$500. This note required him to pay \$200 on April 27, 1987 and \$300 on May 8, 1987. Although the note also referred to "handling charge[s]" the amount of these charges was not disclosed. Mr. Rappaport did not make the scheduled payments, and was contacted by Ms. Lee in an attempt to secure payment.

Mr. Rappaport returned to the Respondent's office once on May 21, 1987. Although his toes were healing well, the Respondent and Mr. Rappaport had an acrimonious discussion concerning the fact that

Mr. Rappaport had not paid his bill. Dr. Minaudo rejected Mr. Rappaport's offer of monthly payments without interest and stated that he was going to assess a \$100 handling fee.

On May 23, 1987, Dr. Minaudo referred Mr. Rappaport's account to his attorney, who wrote a letter seeking payment. On August 14, 1987, Dr. Minaudo referred the still unpaid account to a collection agency (Credit Services). Dr. Minaudo had no written contract with Credit Services, but had an oral understanding whereby Credit Services would retain 50% of any amounts it collected. In addition to the \$500 balance due, Dr. Minaudo added another \$250 to the account he gave Credit Services. This figure represented legal fees charged by Attorney Thomas Keane for services relating to Mr. Rappaport's account.

During August 1987, the Respondent and Mr. Rappaport encountered one another by chance at the Yankee Bargain Barn in Stratham, New Hampshire. This meeting led to an angry exchange of words concerning the overdue account. Mr. Rappaport walked away, but later shouted highly inflammatory remarks at the doctor from a distance of about 50 meters. Dr. Minaudo pursued Mr. Rappaport and struck him during a brief scuffle which, fortunately, produced no significant injury to either party.

Discussion and Conclusions

Like other physicians, podiatrists have no general obligation to provide services free of charge or to renounce any interest in the collection of their accounts. At the same time, physicians have far greater obligations towards the welfare of their patients than

ordinary merchants have toward their customers. The latter are bound primarily by their sense of economic self-interest. The former are also bound by a code of professional ethics.

Ethical considerations require physicians to interact with patients in a reasoned manner which is consistent with their role as healers. This duty applies to emotionally upset and otherwise difficult patients as well as congenial patients. Because there is typically a great disparity between the relative knowledge and skill of a podiatrist and his patients, and because patients often seek podiatric care because they are in pain or distress, podiatrists must be especially careful not to bully, cajole or otherwise take unconscionable advantage of their superior position.

In the instant case, Dr. Minaudo has been accused of failing to adhere to an initial estimate of \$35, but Mr. Rappaport admitted that this amount was identified as the charge for an initial office visit only, and that he knew additional procedures would result in additional charges. Although Dr. Minaudo did not estimate the cost of the surgery, neither did the Respondent request an estimate.

The better practice would have been for Dr. Minaudo to have set forth the exact cost (and payment requirements) of his surgery before he performed it. No medical emergency or other special factor which made this simple disclosure impractical. Nonetheless, there is no indication that Dr. Minaudo unfairly induced Mr. Rappaport to undertake medical procedures which were inappropriate or which were beyond the economic means of ordinary citizens. Moreover, the fees actually charged for the toenail removal surgery performed on Mr. Rappaport were consistent with those charged by other practitioners in southern New Hampshire.

Neither did Dr. Minaudo unfairly induce Mr. Rappaport to sign the promissory note. The practice of offering patients a promissory note as a means of encouraging the payment of suspect accounts does little, however, to foster and maintain the desired professional detachment of the professional practitioner, especially when all methods of payment are not fully discussed with patients in advance of treatment.

There may be circumstances where a promissory note could advance the interests of both parties in clearing up an old account in a reasonable manner, but such a note must identify the exact amount of interest or other handling charges being imposed in addition to the principal amount, and would keep all such charges within reasonable limits. A physician cannot ethically attempt to secure the payment of a patient's account by obligating the patient to pay an additional unspecified future "handling fee" if payments are not made on schedule. That is what Dr. Minaudo did in this case, however, and the Board cautions him and the profession generally against using promissory notes which leave unstated such critical terms as the amount of interest which will be charged.

Dr. Minaudo added \$250 in "additional charges" to the Respondent's account when he turned it over to the collection agency. This \$250 represents a "penalty" or "interest" charge of 50% over a three month period of time or 200% per year which is far in excess of the usual and customary charges for extending commercial credit. Dr. Minaudo believed the charge was justified because he actually had actually incurred a \$250 expense by conferring with his lawyer about Mr. Rappaport's account. Such consultations represent an item of overhead to the physician and not

a specific expense which should be charged to a patient.^{2/} The \$250 handling charge was, therefore, an unreasonable fee, and a podiatrist may not ethically charge or collect an unreasonable fee.

This opinion shall serve as a reprimand to Dr. Minaudo that he has acted unprofessionally within the meaning of RSA 315:9, 'II by: 1) using an promissory note designed to permit him to add "handling charges" to his fees based upon his personal attitude towards the patient; 2) attempting to charge Mr. Rappaport a clearly unreasonable "additional charge" of \$250 when his \$500 account had been unpaid for only three months, and 3) becoming personally and emotionally embroiled in the collection of accounts to an unnecessary extent.

Although the August 1987 parking lot altercation does little credit to either party, the Board does not believe the Respondent's role in this emotionally charged incident constitutes unprofessional conduct under the particular circumstances then present.

Mr. Rappaport's complaint, when considered in connection with the 1985 complaint of Marvin A. Seperson, suggests that the Respondent has not devised effective procedures for dealing with the recurring business problems facing most private practitioners.^{3/}

^{2/} "Consultlation" expenses are distinguishable from actual collection expenses. Although the attorney wrote a single collection letter to Mr. Rappaport in June 1987, not all of the \$250 paid by to Dr. Minaudo was for the preparation of that letter. Moreover, the promissory note did not provide for the payment of attorney's fees, but only for the payment of "court costs" in "small claims court."

^{3/} For instance, he does not routinely disclose his fees to new patients before they incur a financial obligation to him, and does not explain, in advance, his expectations with regard to the payment of fees. Dr. Minaudo also admitted that the promissory note he has been using was not prepared or reviewed by a New Hampshire attorney, but was merely copied from a national magazine.

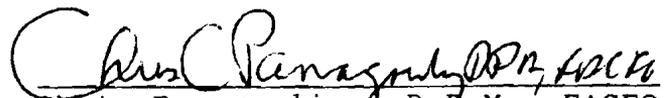
The Board recommends, therefore, that the Respondent seek professional advice aimed at improving both his ability to handle difficult patients and his general office practices concerning fees, billing and insurance. A few improvements in his business practices might make it easier for the Respondent to concentrate on his medical skills, a subject about which the Board has heard no complaint.

THEREFORE, IT IS ORDERED, That G. Stephen Minaudo, D.P.M., is disciplined by means of a written reprimand as provided by RSA 315:9, III based upon his unprofessional conduct in assessing Harry L. Rappaport an unreasonable fee in the form of an unfair and excessive "handling charge," and by using unreasonable collection methods (i.e., a promissory note which subjected the patient to unstated and arbitrary interest or handling charges); and

IT IS FURTHER ORDERED, That this proceeding is terminated.

BY ORDER OF THE BOARD

Dated: July 1, 1988


Chris Panagoulas, D.P.M., FACFO
Chairman

Copies to: Dr. Minaudo - original
Mr. Rappaport
Federation of Podiatric Medical Boards

Atty. General
bpc - Mr. Rappaport, et al
Minaudo 7/6/88