

No. 94-050

IN THE MATTER OF
O. THEODORE NEW, D.P.M.

§ BEFORE THE TEXAS STATE
§ BOARD OF PODIATRY
§ EXAMINERS

§
§ SITTING IN AUSTIN

LICENSE NO. 330

§
§ TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on April 12, 1994, came on to be considered the allegations against Oscar Theodore New, D.P.M. By letter dated March 11, 1994, the Texas State Board of Podiatry Examiners gave preliminary notice to Dr. New of its intent to investigate a patient complaint against him. Dr. New was duly notified of the allegations against him. Dr. New denies all allegations and has cooperated with the Board and presented information in rebuttal.

An informal conference was held between the parties on April 12, 1994, and with Dr. New and Michael R. Sharp, attorney for Dr. New, and the following representatives of the Texas State Board of Podiatry Examiners in attendance: Robert A Lansford, Executive Director, Peter Williams, D.P.M., Board Member, Janie Alonzo, Administrative Assistant, and Cynthia Villarreal-Reyna, Assistant Attorney General.

By his appearance at the informal conference and by his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. New does hereby waive right to a formal hearing before the State Office of Administrative Hearings, and judicial review of this Order.

After discussion of the matters previously outlined in this Order, and subsequent communications, the Board and Dr. New, in order to avoid the expense,

delay and uncertainty of hearing, have agreed to the entry of an order dispensing with the need for further action in this matter.

Dr. New agrees to the following order for the purpose of this proceeding only, and without admitting or denying the findings of fact and conclusions of law herein set out, agrees to the order set out herein:

FINDINGS OF FACT

1. Oscar Theodore New is licensed as a podiatrist in the State of Texas with License Number 330.
2. Oscar Theodore New was licensed as a podiatrist in the State of Texas from July 1964 through December 18, 1991 and including until the present time.
3. Dr. New, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatry Practice Act and the applicable rules.
4. Oscar Theodore New has been the subject of a previous Agreed Board Order #91-11-001. The terms and conditions of that Agreed Board Order are set forth in the Order attached hereto. One condition, Number 8, provided that "Dr. New shall not knowingly perform elective, reconstructive ~~bone~~ surgery with the presence of a known systemic or local infectious process." ~~BONE~~ 
5. On December 18, 1991, Dr. New performed a bunionectomy on the left foot of patient [REDACTED]. Dr. New's medical records indicate that the left foot had swelling and redness. Fluid at the site of the initial incision on the left foot tested positive for a bacteria.
6. A follow-up visit was not scheduled until two-three weeks after the surgery despite the positive culture. Patient was referred to a booklet/brochure for her questions regarding post operative care.
7. On January 10, 1992, February 3, 1992, February 14, 1992, Dr. New performed additional surgery on patient's right and left foot.
8. The act of performing surgery on patient's left foot when the foot was red and swollen and later fluid tested positive for a bacteria is in violation of term Number 8 of Agreed Board Order #91-11-001. That Order provided that "a serious violation of this Order within the one year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and

the imposition of the remaining portion of the suspension or other disciplinary action."

CONCLUSIONS OF LAW

1. Dr. New's act of performing a bunionectomy on patient [REDACTED] on December 18, 1991, when the foot had an active infection is in violation of Agreed Board Order #91-11-001, the Podiatry Practice Act, and section 375.2(a) of Title 22 of the Texas Administrative Code.

2. Dr. New's failure to schedule a follow-up care appointment with patient [REDACTED] after the bunionectomy on December 18, 1991, until January 3, 1992, despite receiving a positive culture for bacteria is in violation of the Podiatry Practice Act and section 375.2(a) of Title 22 of the Texas Administrative Code.

ORDER

THEREFORE, PREMISES CONSIDERED, License No. 330, issued to Oscar Theodore New, D.P.M. is suspended for a period of two years from the date the Order is entered, with all such suspension probated except for the first ^{SIXTY 60} ~~ninety (90)~~ days, provided that Dr. New complies with the following conditions:

1. Dr. New shall not knowingly perform elective, reconstructive bone surgery with the presence of a known systemic or local infectious process.

2. that during the 60-day suspension period, Dr. New shall not perform any tasks or duties that require a license from the Board;

3. that following the 60-day suspension period, Dr. New shall not perform any surgical tasks or duty for forty-five (45) days;

4. that during the two (2) year period of suspension and probation, after the initial 60-day period of suspension and additional 45-day period that Dr. New may not perform surgery, Dr. New will be subjected to random on-site monitoring of all surgical procedures conducted or scheduled by a Board member or a licensed podiatrist selected by the Board;

5. that during the two (2) year period of suspension and probation, post-operative and follow-up care shall be randomly monitored on-site by a Board member or a licensed podiatrist selected by the Board;

6. Dr. New shall perform 20 hours of continuing education in each year of the suspension and probation. These continuing education hours shall be in

addition to the hours required for license renewal. The hours must be accomplished by attendance of seminars approved by the Council on Continuing Education of the American Podiatry Medical Association. The seminars must be pre-approved by the Board. The seminars and courses shall focus on ten hours in infections, infectious diseases, and ten hours in post-operative care.

7. that during the two (2) year period of suspension and probation, Dr. New will submit quarterly reports to the Board detailing his compliance with the conditions of probation;

8. that during the two (2) year period of suspension and probation, Dr. New shall appear annually before the Board to discuss his compliance with the conditions of probation;

9. that during the two (2) year period of this Order of suspension and probation, Dr. New will obey and abide by all laws of the Board; and

10. Dr. New agrees that a violation of this Order within the two year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action. The Board represents that there are no informal or formal complaints pending or in its files that is deemed potentially violative of this probation as of the date of signature.

THIS ORDER IS A PUBLIC RECORD.

I, OSCAR THEODORE NEW, D.P.M., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: August 12, 1994


Oscar Theodore New, D.P.M.

STATE OF TEXAS

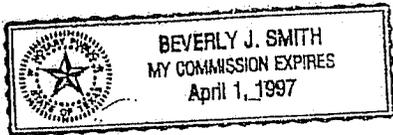
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COUNTY OF Dallas

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BEFORE ME, on this day personally appeared Oscar Theodore New, D.P.M. known to me, who, first, being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this the 12th day of August, 1994



Beverly J. Smith
Notary Public, in and for
the State of Texas

SIGNED AND ENTERED by the Presiding Officer of the Texas State Board of Podiatry Examiners on this the 25 day of AUGUST, 1994.

W. Preston Goforth
W. Preston Goforth, D.P.M.,
President, Texas State Board of Podiatry
Examiners