



TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

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INVESTIGATIONS DIVISION

BOARD STATUTE & RULES REGULATORY HI-LITES

For regulatory and compliance purposes, what portions of the Board Statute and Rules should Podiatrists make sure they know?

Although the entire Podiatric Medical Practice Act (Texas Occupations Code, Chapter 202), the Board Rules (Texas Administrative Code; Title 22, Part 18) and related other State/Federal Laws/Rules are quite extensive, from a "complaint" prevention perspective, it would be in a licensee's best interest to be aware of the following BOARD STATUTE & RULES.

Note: Formal "Disciplinary Actions" (Board Orders) are reported to the National Practitioner Databank-Healthcare Integrity Protection Databank (NPDB-HIPDB) and on the Board's website.

Applicants for a license will be tested (entirely) on:

"Texas Occupations Code, Chapter 202" (Statute)

and

"Title 22-Part 18 Texas Administrative Code" (Rules)

This document is **NOT** an inclusive "Study Guide." Applicants **MUST** study the **ENTIRE** Board Statute & Rules which can also be found on the Board's website (www.tsbpme.texas.gov) by clicking on the "Statute & Rules" link.

STATUTE & RULES TO KNOW

SCOPE OF PRACTICE:

Generally, regarding a podiatrist's scope of practice in Texas, as of July 30, 2010, the Texas Supreme Court had made a final decision on the podiatry scope of practice litigation involving

the TSBPME/TPMA/TMA/TOA. Podiatry scope of practice had then been a matter for final determination to be decided by the Texas Legislature. The 82nd Legislative Session began in January 2011. By the conclusion of the 82nd Texas Legislative Session in May 2011, HB1980/Laubenberg & SB 1264/Uresti died in Committee. As no action was taken by the 82nd Texas Legislature on those identical/companion bills, podiatry scope of practice determinations continue to be made in reference to and in accordance with the March/May 2008 Texas 3rd Court of Appeals Opinions (upheld by the Texas Supreme Court on July 30, 2010) and the statutory definition of "Podiatry" which Texas Occupations Code §202.001(a)(4) provides: ""Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine."

For reference, a "Podiatry Scope of Practice – Staff Resource Information" document has been published on the agency's website at the following:

www.tsbpme.texas.gov/qa.htm#q1

The Board's website is updated as necessary/prudent to reflect any scope of practice changes.

Please review that document (& supporting/hyperlink information) from our website CAREFULLY as this is the Board's response to the litigation outcome. That document also speaks to certain hospital credentialing scenarios (i.e. Texas Health & Safety Code provisions). The practice of podiatry in Texas is limited to treatment of the "Foot/Ankle;" no other portions of the human anatomy.

Hospital Scenarios:

With regard to all credentialing/privileging issues, that is a matter for LOCAL CONTROL between the podiatrist and the facility in accordance, in part, with Texas Health & Safety Code Subchapter E relating to Medical Staff Membership & Privileges §241.101 et al. Privileges are granted by hospital credentialing committees upon consideration of a podiatrist's individual training, experience, certifications and qualifications. For any/all requested privileges, the podiatrist should demonstrate training and proficiency (e.g. via surgical logs or proctoring).

The Board is not authorized to order any hospital/facility to grant privileges to a podiatrist. The TSBPME does however recommend to all credentialing committees that they review a podiatrist's documented training prior to granting privileges. **WHETHER OR NOT PRIVILEGES ARE GRANTED IS A MATTER FOR LOCAL CONTROL.**

Individual Limitation Scenarios:

In recognition of proper practice for public safety, any podiatrist shall provide adequate and appropriate services consistent with best practices and community standards. A podiatrist shall maintain objectivity and shall respect each individual's dignity, and shall not engage in any action that may cause injury and shall always act with integrity in providing services.

A podiatrist shall recognize the limitations on the individual's ability and shall not offer services outside the individual's scope of practice, qualifications/training, and shall not use techniques

that exceed the individual's professional competence. A podiatrist shall not claim, directly or by implication, to possess professional qualifications or affiliations that the podiatrist does not in fact possess.

A podiatrist must also not exceed the scope of practice of "Podiatry" by engaging in the unauthorized practice of some other regulated activity such as "Medicine" (MD/DO; Texas Medical Board). At all times, a podiatrist must remain within the "Podiatry" scope of practice and must clearly identify himself/herself as a "Podiatrist, DPM, Podiatric Physician, Etc."

Again, of utmost importance to the Board is assurance that a podiatrist NOT exceed "Podiatry" scope of practice and does NOT engage in the unauthorized practice of "Podiatry" or "Medicine" (MD/DO; the field licensed/regulated by the Texas Medical Board).

BOARD STATUTE:

- §202.001(4) Definition of "PODIATRY"
- §202.003 Application of Chapter
- §202.059 Meetings
- §202.060 Location of Offices
- §202.151 General Rulemaking Authority
- §202.155 Contracts With Other State Agencies
- §202.253 Grounds for Denial of License
- §202.262 Display of License
- §202.263 Issuance of Duplicate or Amended License
- §202.301 Annual License Renewal
- §202.303 Practice Without Renewing License
- §202.402 Scope of Privilege
- §202.406 Consent For Release of Confidential Information
- §202.501 Board Disciplinary Powers; Administrative Procedure
- §202.502 Revocation/Suspension for Drug related Felony Conviction
 - JUST SAY "NO" TO DRUGS → License Revoked upon Final Conviction
- §202.503 Probation; Hearing
- §202.504 Reissuance of License
- §202.507 Subpoena Authority
- §202.5085 Refund
- §202.510 Temporary Suspension of License
- §202.558 Collection of Penalty
- §202.601 Injunction
- §202.6015 Cease and Desist Order
- §202.605 General Criminal Penalty: Practicing Without License (Fine, Confinement, Both)
 - ACTIVATE & RENEW YOUR LICENSE
- §202.606 Criminal Penalty: Amputation of Foot (Fine, Confinement, Both)

BOARD RULES:

- Chapter 373 Rules Governing Advertising & Practice Identification (entire chapter)

- Notify Board of Practice and Trade names.
- Properly identify your designation as a: “Doctor of Podiatric Medicine; DPM; Podiatrist; Podiatric Physician; Foot Surgeon, Podiatric Surgeon, Foot Specialist, Doctor and Surgeon of the Foot, Injuries and Diseases of the Foot, ... Etc.”
- The purpose of this subsection and of so limiting the professional designations of a Podiatric Physician and his/her practice's business is to insure that the public and all prospective patients are reasonably informed of the distinction between Podiatric Physicians and other medical practitioners as is reflected by the difference in training and licensing and the scope of practice.
- Do **NOT** identify yourself as a “Physician; Medical Doctor; MD/DO” as that is the practice of “Medicine” (MD/DO) under the licensure and regulation of the Texas Medical Board.
 - \$500.00 fine per Advertising/Identification violation; per each day.
 - All Podiatric Physicians shall retain recordings, transcripts, or copies of all public communications by date of publication for a period of at least 2 years after such communication was made.
- Chapter 375 Rules Governing Conduct & Scope of Practice (entire chapter)
 - Refer to the "Podiatry Scope of Practice – Staff Resource Information" document published on the agency’s website (as aforementioned).
 - O.k. to use “Ankle” in an advertisement; but submit all advertisement and trade name layouts to the Board for approval first.
- Chapter 376 Rules Governing Violations & Penalties (entire chapter)
 - Jurisdictional complaints investigated by the Board include, but are not limited to, allegations involving: Death, Substance Abuse, Fraud, Negligence, Advertising, Fees, Records, Inappropriate Physician Behavior, Impaired Physician and Office Inspections.

FRAUD:

- Do **NOT** commit (any type of) Fraud; many local/state/federal/private agencies have jurisdiction to investigate.
- TxHSC §311.0025 “Audits of Billing” of hospitals and facilities for suspicious claims.
- Bill responsibly to insurance companies; both private and government.
- If your license isn’t Activated, then every bill/claim you submit is fraudulent and you are also practicing without a license (General Criminal Penalty).
- If you bill for services outside the scope of practice for Podiatric Medicine, then every claim is considered fraudulent and is a scope of practice violation. This includes the unauthorized practice of “Medicine” (MD/DO) by a Podiatrist.

MISCELLANEOUS:

- The Texas State Board of Podiatric Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Board is abolished September 1, 2017.

- The Board is composed of 9 Members (6 practicing Podiatrists; 3 Public members) appointed by the Governor of Texas & confirmed by the Senate; all serve staggered 6 year terms.
- Formal “Disciplinary Actions” (Board Orders) are reported to the NPDB-HIPDB & on the Board’s Website. Board actions are a permanent part of the licensee’s record at the Board office.
- Please give your patients proper & written “PRE-OP” and “POST-OP” instructions.
- Medical Records: 30 calendar days to provide to patient; can charge reasonable fee.
- Orthotics: develop an “Agreement” form explaining costs and general lack of insurance coverage. www.tsbpme.texas.gov/complaint.htm
- RE-PAY YOUR STATE/FEDERAL STUDENT LOANS OR LICENSE WILL BE SUSPENDED!!!
- PAY YOUR CHILD SUPPORT OR LICENSE WILL BE REVOKED/SUSPENDED!!!
- Please, please, please practice only within the Scope of Practice for Podiatric Medicine!!!
- The **TSBPME** is **NOT** the Texas Medical Board **NOR** the Texas Podiatric Medical Association!!! Know who issues your STATE license to practice Podiatric Medicine.

MORE SPECIFIC COMMON VIOLATIONS

STATUTE:

- §202.253: Entire Section & following highlights.
- §202.253(a)(3): Abuse of drugs.
- §202.253(a)(4): All types of Fraud; not billing within scope/Medicaid & Medicare; Private.
- §202.253(a)(6): Advertisement; not using certifying boards full name when saying “board certified” in ad. Not identifying self as “DPM”, “Podiatric Physician”, etc. Example: “Dr. John Doe” alone is not proper. Must identify “Podiatric” specialty. “John Doe, DPM...” is proper.
- §202.253(a)(7): Boasting or laudatory comments used in advertisements.
- §202.253(a)(13): Employing unlicensed individuals.
- §202.253(a)(15): Additional drug, age, mental capacity issues.
- §202.253(a)(16): Catch All: Lack of conservative care (especially with diabetic patients), no “informed consent” form completed prior to treatment. No or not enough discussion of treatment plan, potential for bad outcome and fees to be paid, dirty offices and surgery areas (clean vs. sterile), assaultive personas and poor “people” skills, double billing, etc.
- §202.253(a)(17): Hospital disciplinary action for by-laws violations, general negligence, incompetence (i.e. failed surgeries).
- §202.502: Abuse of prescription and recreational drugs.
- §202.552: The amount of an administrative penalty may not exceed \$5,000.00. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- §202.605: Activating license after passing exam and obtaining a license.

BOARD RULES:

- Chapter 373: All types of advertising violations, from boasting to not using “D.P.M.”
- §375.3: No conservative or follow-up care, boasting a 100% positive outcome.
- §375.9: In order for the public to be informed regarding the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board, each licensee is required to display in each podiatric medical office information regarding the Board's name, address, and telephone number. The licensee must display a sign furnished by the Board or provide to all patients and consumers a brochure that notifies consumers or recipients of services of the name, mailing address, and telephone number of the Board and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the Board. The sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients. The consumer brochure, if chosen, must be prominently displayed and available to patients and consumers at all times.
- §375.15: Too many civil disputes for business deals (partnerships, contracts for one doc to work in other doc’s office) going bad and causing complaints over who “owns” the patient records, who is responsible for keeping the patient records and following up on their care, etc.
- §375.19: No “informed consent” and discussion of fees and costs with patients.
- §375.21: Provision of patient records within 30 days unless one of the Exemptions for provision of the records applies. Licensees are often refusing to provide records to patient or other doctor due to suspicion of potential for lawsuit, etc. This is not an acceptable reason for failure to provide patient records.
- §375.23: Must report malpractice claims, especially at renewal time on Renewal form. At any other time, must report within 30 days of receipt of claim
- §375.33: Sexual Misconduct violations with patients and staff (**3 Levels:** Sexual Violation, Sexual Impropriety; Sexual Exploitation). **Know your “Professional Boundaries” !!!**
- Chapter 376: Regarding violations, within 20 days after the date the licensee receives the proposed order, the licensee may, in writing, accept the determination and recommended penalty, disciplinary action of the Executive Director or Investigator, propose a counter-offer, or may request, in writing, a hearing on the occurrence of the violation and the amount of the penalty.
- Chapter 378: Obtain 50 hours of CME for biennium (i.e. 50 hours every 2 years). Must keep CME records in Podiatrist’s office for 4 years; subject to random audit and must submit upon request of the Board. A licensee who completes more than the required 50 hours

during the preceding CME period may carry forward a maximum of 10 hours for the next CME period. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and/or an administrative penalty per violation up to the maximum allowed by law.

- Records Retention: Advertising - 2 years; CME - 4 years; Patient/Medical - 5 years.
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“The health and safety of patients shall be the first consideration of the Podiatric Physician. The principal objective to the podiatric profession is to render service to humanity. A Podiatric Physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The Podiatric Physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A Podiatric Physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.”

