TEXAS REGISTER

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code-related activities. The filing provided for in this paragraph is not subject to the contested hearings process, except upon complaint by an interested party or the commission staff.

(C) Copies of contracts or agreements. A Bundled MOU/COOP shall reduce to writing and file with the commission copies of any contracts or agreements it has with any persons providing competitive energy-related activities on behalf of the Bundled MOU/COOP. The Bundled MOU/COOP does not have to produce any contracts it has with third parties if such contracts were negotiated on an arm's length basis. The requirements of this section are not satisfied by the filing of an earnings report. All contracts or agreements shall be filed by June 1 of each year as attachments to the annual report of code-related activities required in subparagraph (B) of this paragraph. In subsequent years, if no significant changes have been made to the contract or agreement, an amendment sheet may be filed in lieu of refiling the entire contract or agreement.

(D) Compliance audits. No later than one year after the Bundled MOU/COOP becomes subject to this section as set forth in subsection (b)(1) and (2) of this section, and, at a minimum, every third year thereafter, the Bundled MOU/COOP shall have an audit prepared by independent auditors that verifies that the Bundled MOU/COOP is in compliance with this section. The Bundled MOU/COOP shall file the results of each audit with the commission within one month of the audit's completion.

(4) Remedies and enforcement. Bundled MOU/COOPs shall be subject to the provisions of subsection (n)(2)-(10) of this section on the same terms and conditions as the TDBU.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2001.

TRD-200101413
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 28, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.19

The Texas Funeral Service Commission adopts new §201.19 Correspondence without changes to the proposed text as published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 273).

The Texas Funeral Service Commission adopts a new section to establish the requirement that all correspondence to an establishment or to the funeral director in charge shall be sent to the street address of the establishment as reflected on the license application.

No comments were received.

The new section is adopted under Section 651.152 of the Texas Occupation Code, as amended by Section 18 of House Bill 3516, 76th Legislature which authorizes the Commission to issue such rules and regulations as may be necessary to effect the intent of the provisions of this Section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2001.

TRD-200101384
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: March 27, 2001
Proposal publication date: January 12, 2001
For further information, please call: (512) 936-2474

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 375. RULES GOVERNING CONDUCT

22 TAC §375.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §375.1 concerning definitions defining the term "foot" with changes to the proposed text that was published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11840). The rule was initially published in an earlier issue of the *Texas Register*.

The changes that were made change where it says "tibia, fibula in articulation" to "tibia and fibula in their articulation".

The definition of "podiatry" provided by the podiatry practice act, Tex. Occup. Code §202.001(4), addresses the scope of practice of podiatry in broad, general terms. The board has determined that there exists uncertainty among various groups resulting from the lack of a definition of the term "foot" in the podiatric practices act. Podiatrists aren't entirely sure of the limits of their practice; insurance companies aren't sure for what procedures podiatrists may charge; hospitals aren't entirely sure about the scope of practice for podiatrists; and the public has no guidance to determine whether a podiatrist is practicing within the scope of practice. The board has determined that the definition of the "foot" should be clarified for purposes of the practice of podiatry. It also has determined that the definition should reflect the long-standing practice of podiatry in the State of Texas. The definition the board has adopted is based on a common sense approach to the treatment of patients that is medically sound and protects the patient's interests. The board has applied its expertise in identifying those injuries or other conditions that affect that ability of the foot to function. The rule was arrived at after considering the public welfare and safety, its effect on the consumer, and various definitions that exist for foot. This definition best describes the foot as it functions in the human body.

What commonly is referred to in layman's terms as the "ankle" is included in the definition of "foot" because injury to the ankle causes a failure in the foot's ability to function properly. A procedure on the ankle would be within the podiatrist's scope of practice to the extent that the injury to the ankle causes the inability of any part of the rest of the foot to function properly. While a surgical procedure is being performed on the part of the foot below the ankle, it frequently occurs that the tendon or ligament being repaired is one which is attached to the lower part of the foot on one end and is attached to a higher part of the foot, on the other end. The podiatrist is in the best position to repair the damage on the higher end of that tissue at the same time as the damage to the tissue is being repaired a few centimeters below that spot. Although some of these tissues may be attached at the foot on one end and as high as the knee at the other end, the board, by this rule, limits the scope of podiatric practice to that area that is no higher up the human body than the area at the level at which the structures affect the function of the foot.

In other instances, after the podiatrist begins surgery, damage to the ankle is noted for the first time. The podiatrist is in the best position to repair the damage during the surgery rather than subjecting the patient to a separate surgical procedure on another day along with the exposure to anesthesia, the discomfort, and other medical risks, costs, and inconveniences that arise from having to return on another day to perform a second procedure that could have been performed during the first surgery. One alternative would be for the podiatrist to obtain another surgeon while the patient is still anesthetized, to complete the repair, assuming another surgeon can be found on short notice. The other option would be to close the patient, leaving the injury as is, until another appointment can be made for another surgery, risking additional injury to the patient in the meantime. Both of those options are not acceptable, when the podiatrist is trained to perform the procedure to repair the damage to the ankle. Of course, a podiatrist that is not trained to perform surgery of the ankle or of the tissues that attach to a location above the lower foot, would not be authorized to perform the procedure, not because the definition does not allow it, but because the proper practice of podiatric medicine consistent with the public health and welfare would require an unqualified podiatrist to refrain from attempting procedures that are not within the podiatrist's capability. The podiatric practice act already protects against such an occurrence by making it a violation of the act for a podiatrist to practice podiatry in a manner inconsistent with the public health and welfare.

Numerous comments were received in response to the proposed rule. The comments and the board's response to the comments follow below:

Comment #1: There seemed to be a generalized concern by many commentators about the word "tibula".

Commentators: There were ten individuals who presented this comment.

TSBPME Response: There was a typographical error in which "tibula" should have been printed tibia. The rule was republished in the December 1, 2000 issue of the *Texas Register* 25 TexReg 11840, showing the correct spelling.

Comment #2: Most of the commentators were very concerned with the proposed definition of the word "foot" and cited many other sources, as will as their own definitions that they felt were more applicable to the word "foot".

These definitions included:

Dorland's Illustrated Medical Dictionary, 29th Edition; W.B. Saunders Company, Copyright 2000: "1. The distal portion of the Primate leg, upon which an individual stands and walks. It consists, in man, of the tarsus, metatarsus, and phalanges and the tissues encompassing them."

Stedman's Medical Dictionary, 27th Edition: Lippincott, Williams, Wilkins, Copyright 2000; "1. The lower, pedal, podalic extremity of the leg."

Webster's Ninth New Collegiate Dictionary; Merriam-Webster, Inc., Copyright 1984. "1. The terminal part of the vertebrate leg upon which an individual stands."

International Dictionary of Medicine and Biology; John Wiley and Sons, Inc., copyright 1986. "The distal end of the lower limb."

Black's Medical Dictionary, 37th Edition; A.C. Black (Publishers) Limited, Copyright 1992; "Foot is that portion of the lower limb situated below the ankle joint."

Taber's Encyclopedic Medical Dictionary, Edition 18; F.A. Davis company, Copyright 1997; "Foot-determinate portion of the lower extremity. The bones of the foot include the tarsus, metatarsus and phalanges."

Single standard definition of the foot used in all anatomical text books, including 1. Gray's Anatomy, 35th Edition; Warwick and Williams, Copyright 1973, W.B. Saunders Company. 2. Cunningham's Textbook Anatomy, Ninth Edition; Copyright 1951, Oxford University Press. 3. Anatomy for Surgeons, Volume III, First Edition; Copyright 1958, Heber-Harper. 4. Clinically Oriented Anatomy, Second Edition; Copyright 1985, Williams and Wilkins. 5. Grants Method of Anatomy, Eleventh Edition; Copyright 1989, Williams and Wilkins. 6. Clinical Anatomy for Medical Students, Fifth Edition; Copyright 1995, Little Brown and Co. "The foot has 3 bony anatomical components: 1. the tarsus, (in which there are seven bones; talus, calcaneum, navicular cuboid, lateral cuneiform, intermediate cuneiform, and medial cuneiform); 2. the metatarsus, (in which there are five metatarsal bones); 3. the phalanges, (in which there are 5 bony units, the first digit has a proximal and distal phalanx, the 2nd, 3rd , 4th & 5th digits each have a proximal, intermediate and distal phalanx). Soft tissues, including muscle, fascia, tendons, which attach to these bones, as well as nerves and vessels complete the structure of the foot."

One commentator felt that the Achilles muscle was not part of the foot, but he felt the attachment of the tendon to the calcaneus would be considered a portion of the foot, but the tendon that is proximal to the foot is not part of the foot.

Another commentator felt "I think it is common medical knowledge that the foot includes the phalanges, metatarsals and encompassing soft tissues. This does not include the ankle joint, which includes the distal tibia and fibula."

Another commentator defined the foot as "The talus is the transitional bone. The upper surface of the talus belongs to the ankle and the lower surface of the talus belongs to the foot. The foot is coimposed of the hindfoot, midfoot and forefoot. The hindfoot ends in the center of the talus and everything from the point distally is considered the foot. Once you reach the most superior proximal aspect of the talus you are in the ankle."

The commentators were the President of Texas Orthopedic Association; Senior Associate Dean, Baylor College of Medicine; Chairman of Podiatry Issues Committee, Texas Orthopedic Association, and 24 individuals.

TSBPME response: The board disagrees with the commentators' conclusions. The definition of the foot, even among many different references, varies. Some definitions even discuss the weight bearing portion of the extremity, which includes those structures outlined by the TSBPME board's definition. Therefore, these weight bearing structures and any structures that affect their function are included within our definition. In addition, even Stedman's, International, and Webster's Medical Dictionaries cited by the commentators define the foot by addressing the function of the foot, and the function described in the definitions includes the function performed by the ankle. Therefore, the ankle is included in the definition of the foot provided by those three dictionaries.

Comment #3: Commentators felt that the training for podiatrists was not as good as orthopedists and that the podiatrist did not have the training that would cover procedures within the proposed definition of foot. One commentator felt podiatrists have no training in some of the areas that might be covered by the proposed definition. Another commentator stated podiatric training is limited to the anatomy of injuries and disuse of the foot, therefore, to permit the podiatric community to treat a portion of the body for which they do not have specific training would be a detriment to public health.

The commentators were President of Texas Orthopedic Association and eight individuals.

TSBPME response: The TSBPME does not agree, the review of course work in the schools' curriculum and of podiatric students' transcripts filed with the Board, show that podiatric education covers all areas of the body, as well as the particular areas concerned with the above proposed definition.

Comment #4: Commentators felt that there was a movement to redefine the foot to annex the ankle and leg into the scope of practice for podiatry and therefore, there was a potential danger to the public health and safety. One commentator was concerned that the proposed definition could extend privileges to the knee.

The commentators were President, Texas Orthopedic Association; Chairman of Podiatry Issues Committee, Texas Orthopedic Association and four individuals.

TSBPME Response: The proposed definition would not result in extension of the existing privileges for podiatric physicians and certainly was not meant to construe any representation of coverage around the knee. Podiatric physicians in the State are currently treating conditions that are covered in the proposed definition that include treatment of sprained ankles, treatment of posterior tibialis tendonitis, lateral ankle stabilization, primary ankle ligament repair, tarsal tunnel syndrome, tendo-Achilles lengthening, gastroc recession as pertained to treatment of flatfoot, distal tibia fractures and fibular fractures. All the above procedures are procedures for podiatrists, which receive credentialing from hospitals to perform after showing they are capable to perform those procedures in the State of Texas. There are existing checks and balances for the quality of care that is performed by any podiatric surgeon that performs those types of procedures. Regardless of how broadly the scope of practice defined in the law permits a surgeon to practice podiatric medicine, every surgeon, including a podiatrist, must demonstrate the ability to perform specific procedures before a hospital will issue credentials, Although this definition clarifies the extent to which a podiatrist may practice podiatry, no podiatrist will be permitted to perform a procedure unless the podiatrist has demonstrated to the hospital the specific ability to perform the procedure. As for procedures provided in the podiatrist's office, the Board's disciplinary process provides adequate checks and balances to protect the public. If a podiatrist places the public at risk by performing a procedure for which the podiatrist is not adequately trained, whether it is performed in a hospital or in an office suite, that podiatrist would be subject to disciplinary action by the Board. The board has not received consumer complaints regarding these types of procedures of any greater or abnormal proportion as compared to any other type of complaint. The TSBPME has a mechanism of handling complaints concerning the quality and care for the citizens of Texas. Many hospitals have professional activities committees. Many State associations have peer review committees, and the credentialing departments of hospitals have stringent requirements on all requested procedures and especially those that may require further experience and education. Historically, podiatrists have performed these procedures throughout the State of Texas, and the appropriate checks and balances are in place to protect the people as consumers of the State of Texas.

Comment #5: One commentator felt that there was an added cost to the State in allowing the proposed definition to pass and the types of procedures that would now be covered under that definition. He also felt like "An orthopedic surgeon who is highly qualified to treat maladies of the foot and ankle, does not require the work of an additional physician and many of the injuries of the ankle or above require some hospitalization."

Commentator: Chairman of Podiatry Issues Committee, Texas Orthopedic Association.

TSBPME response: For many hospitals there is a co-admission requirement for podiatric physicians or a medical clearance for a co-admitting admission in the hospital. Most insurance companies or reimbursement issues will allow one medical history and physical charge and would not allow two charges. Therefore, the podiatric admission would not create any type of charge to the State, as the co-admitting physician or anesthesiologist, and not the podiatrist, would be billing for that particular function. In some respects there may be less of a charge when a podiatrist is involved because an orthopedic surgeon has already charged the admitting fee prior to the surgical intervention, resulting in two fees - one by the orthopedic surgeon and one by the consulting physician.

Comment #6: Commentators felt there were different standards of care for foot problems, that the orthopedist who cares for the foot and ankle problems in this state is held to a different legal standard than the podiatric community, and that the podiatric community actively tries to distance itself from medical physicians' standard of care.

The commentators were the Chairman of Podiatry Issues Committee, Texas Orthopedic Association and one individual.

TSBPME response: The board is not aware of different standards of care in the podiatric and medical community. Many states have legislation that does not allow practitioners of different specialties to testify against one another. This would apply for an orthopedist testifying against a podiatrist, as well as a podiatrist testifying against an orthopedist. This rule does not create any different standard of care. Podiatric physicians, as well as medical doctors follow the allopathic branch of medicine in their educational process and are therefore, the same as far as standards of care.

Comment #7: Commentators felt that the recognition and initial treatment for diseases, such as chronic heart failure, liver disease, or communicable infections can be vital to the care of the patient and that most of this is not included in the training of the podiatrist.

The commentators were the Chairman of Podiatry Issues Committee, Texas Orthopedic Association and one individual.

TSBPME response: The above noted conditions are addressed in the curriculum for the training of the podiatric physicians. The addition of this rule has no effect on the need for podiatrists to be aware of the recognition or treatment of such diseases.

Comment #8: Commentators felt that the CPT codes, which are the codes utilized in billing for certain procedures is evidence of a separation between leg and foot. The commentator proposed that in the CPT code book there is a separate section entitled leg, tibia and fibula and ankle joint, which was separate from the section entitled foot and toes.

Commentator: There was one individual who submitted this comment.

TSBPME response: CPT codes are a method of separating procedures in the reimbursement process for third party payment. There are so many codes that sit under foot and toes it makes administrative sense to have a separate division. This is not to say that CPT codes in the Neurology section would not be applicable to both orthopedic surgeons and podiatric physicians in their treatment of the foot.

Comment #9: Commentators felt that the purpose of the proposed definition of the foot was to expand the scope of surgical services and treatment provided by the podiatrist. One commentator felt "there is a significant medical concern that the inclusion of the ankle by the podiatric board would allow surgical intervention of the ankle, inclusive of total ankle replacement, fusions and trauma." There is concern raised that a podiatrist in the U.S. does not have sufficient training to perform these or other complicated procedures.

The commentators were Chairman, Podiatry Issues Committee, Texas Orthopedic Association and 16 individuals.

TSBPME response: The podiatry practice act does not contain a definition for "foot". The proposed definition of the foot accurately reflects the present treatment and procedures for the ailments of the foot, which are currently being performed in the State of Texas by podiatric physicians. The proposed definition of the foot allows those procedures which research conducted by the board indicates podiatric physicians are properly trained and presently credentialed to perform in the State of Texas. While the board is only concerned about protecting the consumers of the State of Texas, it should be noted that the laws of other states include the ankle, and that the training throughout the United States does include ankle replacement, fusions and trauma.

Comment #10: Commentators felt that the efforts of the board to redefine the foot confuses the credentialing process.

Commentators: One individual.

TSBPME response: While the board appreciates the above noted comment, the credentialing process throughout the State of Texas has been very successful in identifying and credentialing those particular procedures that need additional competence and training. The credentialing process at all hospitals should continue as it has by requiring documentation of competency and experience for any procedures in treating the ailments of the foot. A podiatrist would not be any more likely, as a result of the addition of this definition, to perform procedures that require credentials, unless the podiatrist demonstrated the competence to do them.

Comment #11: Commentators felt that the foot and ankle are functionally interdependent and they felt that the definition of orthopedic surgery and classical anatomy of medical science that the foot and ankle are separate structures.

Commentator: Two individuals.

TSBPME response: While the above comment fits along the line of one definition of foot, it offers a slightly different approach from the other comments. However, the board feels the proposed definition of the foot allows those procedures which podiatric physicians are properly trained and presently credentialed to perform in the State of Texas.

Comment #12: The commentators felt that alteration of the definition of foot could leave loopholes, such as injuries suffered to the tibia or fibula that would not be included within the definition.

Commentator: One individual.

TSBPME response: The board feels that the proposed rule does not alter the definition of the foot and does not permit the podiatric physician to perform any new procedures that are not presently credentialed and available to perform currently. Any of these types of procedures that are clearly above the tibia/fibular articulation and does not affect the function of the foot would be deemed by this board to be outside the scope of the practice of podiatry.

Comment #13: Commentators felt the only reason for the definition proposal was one of remuneration. The commentators felt that there was no medical definition of the foot of which they were aware of, which included the ankle or tibia and fibula.

Commentators: Two individuals.

TSBPME response: The proposed definition is one of clarification and does not propose any medical or surgical treatment of the foot other than those currently being performed by podiatric physicians in the State of Texas. The definition provides guidance to podiatrists, clarifying the boundaries of the scope of practice. The public is better protected when the podiatrist has been notified of the boundaries of podiatric practice. The orthopedic community may have a vested financial interest in trying to limit who treats those structures that we have defined. However, it is this Board that is charged by the legislature with regulating the practice of podiatry.

Comment #14: Commentators were concerned that the proposed definition was done without any formal or informal consultation with the Texas Medical Association or Texas Orthopedic Association and wants a committee including them to research and discuss the proposed definition.

The commentators were President, Texas Medical Association and President, Texas Orthopedic Association.

TSBPME response: By examination of the comments that have been made and the understanding of the podiatric physicians curriculum, education and training it seems that this board of which some members are podiatrists, licensed and currently practicing in Texas, is the best to understand what the podiatric physician has been trained to perform. In addition, the board feels that the licensing board does not have an obligation to receive permission from the Texas Medical Association or the

Texas Orthopedic Association in regulating the practice of podiatric medicine on behalf of the consumers of the State of Texas. The TSBPME rightfully was created by the Texas Legislature to regulate the practice of podiatric medicine. However, the Board is always open for any comments or suggestions and encourages the Texas Medical Association and the Texas Orthopedic Association to meet with other podiatrists or groups of podiatrists or associations and to put forth independently or jointly their own resultant thoughts, conclusions, suggestions to this Board.

Comment #15: Commentators felt that the definition of foot adequately clarifies the training of many podiatric surgeons. The commentators especially felt that the new practitioner with additional extensive postgraduate training in trauma and reconstruction of the ankle, the ability to clearly market what the podiatrist does.

Commentator: One individual.

TSBPME response: The board agrees. To the extent that a podiatrist has received the necessary training, that podiatrist is qualified to perform procedures to those structures included in the definition of "foot", as proposed.

Comment #16: Some commentators felt that podiatrists were the best group to define what the structure of the foot was. He felt that podiatrists are named as "foot specialists" and, therefore, they as a group are most qualified to define what the structure of "foot" is.

Commentator: One individual.

TSBPME response: The board agrees.

Comment #17: Commentator felt that there might be confusion on exactly what the education of a Doctor of Podiatric Medicine is. The commentator described the education as the typical DPM completes a four-year undergraduate degree and has entrance prerequisites, similar, if not identical to those who attend medical school, osteopathic, medical or dental school. This is followed by four years of podiatric medical school. The first two years of podiatric medical school education has the same basic sciences as all other allopathic/osteopathic medical schools. There is sometimes a misconception that somehow podiatry students take only foot basic sciences. The basic sciences are the same as the other schools of medicine and often have the same instructors. These are comprehensive courses and not limited. For example, podiatry students complete the anatomical dissection of the entire human cadaver, learn the physiology of all organ systems and study the pathological basis of diseases that affect the entire body. The podiatric student's transcripts mirror those of other physicians. The last two years include instruction and rotation through many of the same clinical specialties as general medicine. Additionally, during the last two years the podiatry student begins to concentrate on foot, ankle and leg, much as a dental student focuses on the head and neck. Following graduation most DPMs then perform postgraduate residencies in hospitals. Although these are diverse, surgical residencies are one to three years in duration.

Commentator: One individual.

TSBPME response: The board agrees.

Comment #18: One commentator was concerned that to have an invisible line as the definition of foot may cause harm to consumers.

One of the commentators felt that it would be harmful to the State residences to prevent podiatrists from treating their patients functionally and that it would not make sense to stop repairing a ruptured tendon or ligament that attaches to the foot when it reaches some mystical line. In addition, he felt that many procedures are used in combination when addressing many foot deformities. He used an example that many flatfeet are caused by or created by a contracted Achilles tendon (equines deformity of the foot) and that not lengthening the structure when surgically repairing a symptomatic flatfoot would not only be harmful to the patient, but may be considered malpractice. He felt that even the orthopedist recognized the functional foot concept. He related that their subspecialty group is named the American Association of Orthopedic foot and ankle surgeons, not just foot surgeons. He felt that they understand, as podiatrists do, the close interdependency of the foot and ankle.

Another commentator commented that in nearly twenty years of practice he has successfully treated hundreds, perhaps thousands of patients with rearfoot and ankle pathology. He had repaired and set ankle fractures and sprains. He has also repaired flatfoot and cavus foot, as well as lengthened the Achilles and transferred ankle tendons. He related that patients continue to come to him for these problems and were referred by satisfied friends and family physicians. He relates he has never had a complaint lodged against him regarding those treatments. He related that in podiatric medical school he was taught the foot and leg as a functional unit and throughout his training he was taught to treat the entire weight bearing portion of the lower extremity. He also relates that like all physicians he has had to update his skills often to reflect the current state of podiatric medical knowledge. These have included the use of lasers, reading MRI's, performing various internal fixation implant procedures, as well as utilizing arthroscopes, endoscopes and many other techniques.

Commentators: Two individuals.

TSBPME response: The board agrees.

Comment #19: One commentator felt that the credentials committees in the hospitals do an excellent job in protecting the consumers.

One of the commentators through his experience of sitting on the credentials committee in his hospital felt that everyone understands the true scope of practice by all doctors within the hospitals not defined by the state law, but by the training, expertise, ability and their credentials. For example, he related that many cardiologists are not allowed to do invasive cardiac procedures in his hospital without the documentation of adequate expertise. He also felt that the proposed definition to include all those podiatric physicians that are capable of performing procedures does not allow every podiatrist to do those more advanced procedures. He felt the limiting factor in the marketplace for all doctors (medical, orthopedic and podiatrists) is the credentialing that is performed at the hospital or surgical center.

Another commentator felt that this is not a license for a podiatrist to practice outside the scope of their competence. It is merely a clear definition of the foot and its governing structures in the State of Texas and other states throughout the U.S. Physicians are licensed to treat all physical conditions, anatomical regions and disease. In other words, all licensed M.D.'s have a license to perform foot surgery, heart surgery, deliver babies, medically manage diabetes, treat mental illness, such as schizophrenia and perform cataract surgery. However, no one physician has the capability of doing all of these. Physicians, with the desire to

first do no harm, limit the conditions they treat and procedures they perform based on their level of competence. In addition, hospitals limit the privileges to the competence of the individual physician. This is based on training and experience and not their medical license. This is also true for podiatrists.

Commentators: Two individuals.

TSBPME response: The board agrees.

Comment #20: One commentator felt that the practice act for a podiatrist presently covers more than treating the foot. The commentator described his observation as Practice Act does not state that DPM's may treat the foot, instead the Act states that DPM's may treat any "disease, disorder, physical injury, deformity or ailment" of the human foot. Such disorders include the failure of the foot to function properly. In order to remedy the problem so that the foot does function properly it is often necessary to treat other parts of the body (in other words, tendons that attach to the foot, the ankle, etc.). Therefore, you may want to consider addressing a scope of practice issue via rule, which would read something like this: "A Texas licensed Podiatrist may utilize any system or method to treat any disease, disorder, physical injury, deformity or ailment of the human foot. Such disorders include the failure of the foot to function properly, as the lower extremity of the leg, which may be caused by trauma to the soft tissues, (muscles, nerves, vascular structure, tendons, ligaments, or any other anatomical structures) which insert into or attach to the foot or other anatomical structures in articulation with the talus. Appropriate procedures, when medically necessary to treat any disease of the foot and/or its function, include the use of a prescription and nonprescription drugs; surgical or nonsurgical treatments of anatomical structures that affect the function of the foot, such as the ankle and soft tissue, which insert into the foot; the surgical removal of skin, soft tissue and bone from parts of the body other than the foot; medical histories and physicals; and hyperbaric oxygen therapy".

Commentator: Legal counsel, Texas Podiatric Medical Association.

TSBPME response: While the board realizes there are different ways to describe the present function and present existence of the podiatric physician in their care and treatment of the people of the State of Texas, we felt defining the foot, which had not been done previously in regard to the present practice of podiatry was in the best interest of the citizens of Texas.

Changes to the proposed rule are that in both places where the language appears, "tibia, fibula in articulation with the talus" is changed to read "tibia and fibula in their articulation with the talus."

Changes to the proposed rule reflect non-substantive variations from the proposed amendments. The board's legal counsel has advised that the changes to the proposed rule affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections and that the changes to the published proposed rule clarify the intent of the proposed rule. Accordingly, republication of the adopted sections as proposed amendments is not required.

The amendment is adopted under the Tex. Occup. Code §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.151.

§375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

(1) Board--The Texas State Board of Podiatric Medical Examiners.

(2) Foot--The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.

(3) Medical Records--Any records, reports, notes, charts, x-rays, or statements pertaining to the history, diagnosis, evaluation, treatment or prognosis of the patient including copes of medical records of other health care practitioners contained in the records of the podiatric physician to whom a request for release of records has been made.

(4) Office--In the singular, includes the plural.

(5) Public communication--Any written, printed, visual, or oral statement or other communication made or distributed, or intended for distribution, to a member of the general public or the general public at large.

(6) Solicitation--A private communication to a person concerning the performance of a podiatric service for such person.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2001.

TRD-200101453
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: April 1, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 305-7000

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CHAPTER 377. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§377.1 - 377.3, 377.5 - 377.7, 377.10, 377.14, 377.15, 377.20 - 377.22, 377.24, 377.27, 377.31 - 377.38, 377.41, 377.45

The Texas State Board of Podiatric Medical Examiners adopts amendments to §§377.1-377.3, 377.5-377.7, 377.10, 377.14-377.15, 377.20-377.22, 377.24, 377.27, 377.31-377.38, 377.41 and 377.45 concerning Procedures Governing Grievances, Hearings, and Appeals without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9351). The text will not be republished.

The amendments are being adopted in accordance with the Texas Government Code §2001.039 regarding agency review of rules (formerly 1997 General Appropriations Act, Article IX,