



# TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

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*"Assuring Quality Podiatric Medicine For The Citizens Of Texas"*

**INVESTIGATIONS DIVISION**

## BOARD STATUTE & RULE 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 be found on the Board's website (<http://www.foot.state.tx.us>) by clicking on the "Statute & Rules" link.

## **STATUTE & RULES TO KNOW**

### **SCOPE OF PRACTICE:**

**A Podiatrist's scope of practice in Texas is defined, at least, in three parts:**

First, Section 202.001(4) of the Texas Occupations Code (Statute) states: "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.

Second, Section 375.1(2) of the Texas Administrative Code, Title 22, Part 18 (Rules) states: "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.

Third, in accordance with Texas Health & Safety Code Subchapter E relating to Medical Staff Membership & Privileges (§241.101 et al): Procedures to treat the foot/ankle by a Podiatrist at the hospital/surgical facility level are within the scope of practice for Podiatric Medicine in the State of Texas (by “any system or method”) as long as the Podiatrist is qualified and credentialed to do so and has hospital/surgical privileges for the same, for performance of the procedure at the hospital/surgical level as cleared by medical staff.

**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)
  - Section 375.1(2) Definitions of “FOOT”: “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.” **(As of 03/14/2008, final litigation pending.)**
  - 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.
- 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; C.M.E. - 4 years; Patient/Medical - 5 years.

**"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."**