

## CHAPTER 720

S.B. No. 1080

## AN ACT

relating to the regulation of podiatry and to the continuation and functions of the Texas State Board of Podiatry Examiners; providing a penalty.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Article 4567, Revised Statutes, is amended to read as follows:

Art. 4567. DEFINITIONS. (a) Any person shall be regarded as practicing *podiatry* [~~chiropr~~ody] within the meaning of this law, and shall be deemed and construed to be a *podiatrist* [~~chiro~~podist], who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a [~~chiro~~podist,] podiatrist, [~~pedic~~urist,] foot specialist, doctor or use any title, degree, letter, syllable, word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of *podiatry* [~~chiro~~ody].

(b) *In this chapter:*

(1) "Board" means the Texas State Board of Podiatry Examiners.

(2) "Executive director" means the employee of the board who manages the day-to-day operations of the board.

SECTION 2. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4567e to read as follows:

Art. 4567e. ADMINISTRATIVE PENALTY. (a) *The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.*

(b) *The penalty for a violation may be in an amount not to exceed \$2,500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

(c) *The amount of the penalty shall be based on:*

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) An executive director who determines that a violation has occurred may issue to the board a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account;  
or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) An executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

SECTION 3. Article 4568, Revised Statutes, is amended by amending Subsections (a) through (f) and adding Subsections (m) through (r) to read as follows:

(a) The Texas State Board of Podiatry Examiners shall consist of nine (9) members. Six (6) members must be reputable practicing podiatrists who have resided in this state and who have been actively engaged in the practice of podiatry for five (5) years immediately preceding their appointment. Three (3) members must be representatives of the general public. However, a public member may not participate in any part of the examination process for applicants for a license issued by the Board that requires knowledge of the practice of podiatry. Appointments to the Board shall be made by the Governor without regard to the race, color, disability, [reced,] sex, religion, or national origin of the appointees.

(b) A person is not eligible for appointment as a public member of the Board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a ~~[an agency or]~~ business entity or other organization regulated by the Board or receiving funds from the Board ~~[that provides health care services or that sells, manufactures, or distributes health care supplies or equipment]; [or]~~

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the Board or receiving funds from the Board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses ~~[has, other than as a consumer, a financial interest in a business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].~~

(c)(1) An officer, employee, or paid consultant of a Texas trade association in the health care industry may not be a member or employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(2) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the health care industry may not be a Board member and may not be an employee of the Board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(3) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest ~~[A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the health care industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the health care industry].~~

(d) A person may not serve as a member of the Board or act as the general counsel to the Board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the Board ~~[who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the Board or act as the general counsel to the Board].~~

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection ~~[Section]~~ (a) or (b) of this article for appointment to the Board;

(2) does not maintain during service on the Board the qualifications required by Subsection (a) or (b) of this article;

(3) violates a prohibition established by Subsection ~~[Section]~~ (c) or (d) of this article; ~~[or]~~

(4) cannot discharge the member's term for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the Board

~~[(3) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member].~~

(f)(1) The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a Board member exists.

(2) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the Board of the ground. The president

~~shall then notify the Governor that a potential ground for removal exists [if a ground for removal of a member of the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason].~~

(m) ~~The Board shall file annually with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.~~

(n) ~~The executive director or the director's designee shall develop an intraagency career ladder program. The program shall require intraagency posting of all non-entry-level positions concurrently with any public posting.~~

(o) ~~The executive director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.~~

(p) ~~The Board shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Board.~~

(q) ~~The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.~~

(r) ~~The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.~~

SECTION 4. Article 4568b, Revised Statutes, is amended to read as follows:

Art. 4568b. SUNSET PROVISION. The Texas State Board of Podiatry 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, 2005 [1993].

SECTION 5. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4568c to read as follows:

Art. 4568c. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) ~~The executive director or the director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:~~

(1) ~~personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;~~

(2) ~~a comprehensive analysis of the board work force that meets federal and state guidelines;~~

(3) ~~procedures by which a determination can be made of significant underuse in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

(4) ~~reasonable methods to appropriately address those areas of underuse.~~

(b) ~~A policy statement prepared under Subsection (a) of this article must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this article, and be filed with the governor's office.~~

(c) ~~The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this article. The report may be made separately or as part of other biennial reports to the legislature.~~

SECTION 6. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4568d to read as follows:

Art. 4568d. TRAINING; STANDARDS OF CONDUCT; INFORMATION. (a) ~~Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.~~

*(b) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

SECTION 7. Subsections (c), (i), and (k), Article 4569, Revised Statutes, are amended to read as follows:

(c) The examinations shall be written and practical and in the English language, and all applicants that possess the qualifications required for an examination and who shall pass the examinations prescribed with a general average of seventy-five per cent (75%) in all subjects and not less than sixty per cent (60%) in any one subject shall be issued a license by the Board to practice podiatry in this State. *The Board shall have the examination validated by an independent testing professional.*

~~(i) Not later than the 30th day after the date on which a licensing examination is administered under this chapter, the secretary-treasurer of the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the secretary-treasurer of the Board shall notify examinees of the results of the examination not later than the 14th day after the date on which the Board receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the secretary-treasurer of the Board shall notify the examinee of the reason for the delay before the 90th day [The secretary-treasurer of the Board shall report to each applicant the grade made in each subject and the general average on the examination within sixty (60) days from the date of the examination].~~

(k) If requested in writing by a person who fails the licensing examination *administered under this chapter*, the Board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 8. Section 1, Article 4571, Revised Statutes, is amended by amending Subsections (c), (d), (e), (g), and (h) and adding Subsection (i) to read as follows:

*(c)(1) The Board shall develop a mandatory continuing education program. In developing its program the Board shall:*

*(A) establish by rule the minimum hours of continuing education required for license renewal;*

*(B) identify the key factors that lead to the competent performance of professional duties;*

*(C) develop a process to evaluate and approve continuing education courses; and*

*(D) develop a process to assess the participation and performance of a person with a license in continuing education courses to enable the Board to evaluate the overall effectiveness of the program.*

~~(2) The Board may assess the continuing education needs of a person with a license and require the person to attend continuing education courses specified by the Board [In order to ensure the continuing competence of persons licensed to practice podiatry, the Texas State Board of Podiatry Examiners may adopt and administer rules requiring continuing education, not to exceed 25 hours per licensee per year, as a prerequisite to annual license renewal. If adopted by the Board, such rules shall establish standards of accreditation for continuing education programs or courses of study, and only those programs or courses of study which are inspected and accredited by the Board shall apply toward the satisfaction of such continuing education requirements. The Board is hereby authorized to impose a fee, not to exceed \$25 per licensee per year, to cover the cost of administration of any continuing education rules which may be adopted pursuant to this Section].~~

~~(d) A person may renew his unexpired license by [satisfying any continuing education requirements pursuant to Subsection (e) of this Section and by] paying to the Board before the expiration date of the license the required renewal fee.~~

~~(e) If a person's license has been expired for 90 days or less, the person may renew the license by [satisfying any continuing education requirements pursuant to Subsection (e) of this~~

~~Section and by~~ paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(g) If a person's license has been expired for more than 90 days but less than *one year* [~~two years~~], the person may renew the license by [~~satisfying any continuing education requirements pursuant to Subsection (c) of this Section and by~~] paying to the Board *all unpaid* renewal fees and a fee that is equal to the examination fee for the license.

(h) If a person's license has been expired for *one year or longer* [~~two years or more~~], the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. *However, the Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.*

(i) *At least 30 days before the expiration of a person's license, the Board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the Board.*

SECTION 9. Article 4571, Revised Statutes, is amended by adding Section 7 to read as follows:

*Sec. 7. The Board by rule may provide for a person who holds a license under this chapter to be placed on inactive status. Rules adopted under this section shall include a time limit for a license holder to remain on inactive status.*

SECTION 10. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4571a to read as follows:

*Art. 4571a. PROVISIONAL LICENSES. (a) On application, the board shall grant a provisional license to practice podiatry. An applicant for a provisional license under this section must:*

*(1) be licensed in good standing as a podiatrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this chapter;*

*(2) have passed a national or other examination recognized by the board relating to the practice of podiatry; and*

*(3) be sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice under this article.*

*(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this article if the board determines that compliance with that subsection constitutes a hardship to the applicant.*

*(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the holder of a provisional license under this section if:*

*(1) the provisional license holder passes the examination required by Article 4569, Revised Statutes, and its subsequent amendments;*

*(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and*

*(3) the provisional license holder satisfies any other license requirements under this chapter.*

*(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this deadline to allow for the receipt of pending examination results.*

SECTION 11. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4571b to read as follows:

*Art. 4571b. TEMPORARY LICENSE. (a) The board by rule may adopt a procedure for the issuance of a temporary license to an applicant other than an applicant who applies under Article 4571a, Revised Statutes, and its subsequent amendments.*

*(b) Rules adopted under this article shall establish the criteria for issuance of a temporary license and shall establish a maximum period during which a temporary license is valid.*

SECTION 12. Subsections (a) and (b), Article 4573, Revised Statutes, are amended to read as follows:

(a) The Board shall maintain an information file about each complaint filed with the Board ~~[relating to a licensee]~~. If a written complaint is filed with the Board ~~[relating to a licensee]~~, the Board, at least ~~[as frequently as]~~ quarterly *and until final disposition of the complaint*, shall notify the parties to the complaint of the status of the complaint ~~[until final disposition]~~ unless the notification would jeopardize an undercover investigation.

(b) The Board shall revoke or suspend a license, *place on probation a person whose license has been suspended* ~~[probate a license suspension]~~, or reprimand a licensee for violation of the law regulating the practice of podiatry or a rule adopted by the Board. *If a license suspension is probated, the Board may require the license holder to:*

(1) *report regularly to the Board on matters that are the basis of the probation;*

(2) *limit practice to the areas prescribed by the Board; or*

(3) *continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.*

SECTION 13. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4573c to read as follows:

*Art. 4573c. COMPLAINT PROCEDURE. (a) The board's information file under Subsection (a), Article 4573, Revised Statutes, and its subsequent amendments, shall be kept current and contain a record for each complaint of:*

(1) *all persons contacted in relation to the complaint;*

(2) *a summary of findings made at each step of the complaint process;*

(3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*

(4) *other relevant information.*

(b) *The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.*

(c) *The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.*

(d) *The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:*

(1) *distinguish between categories of complaints;*

(2) *ensure that complaints are not dismissed without appropriate consideration;*

(3) *require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*

(4) *ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*

(5) *prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.*

(e) *The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.*



(f) *The executive director shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.*

SECTION 14. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4573d to read as follows:

Art. 4573d. *INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:*

(1) *informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(2) *informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(b) *Rules adopted under this article must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the board's legal counsel to advise the board or the board's employees.*

SECTION 15. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4573e to read as follows:

Art. 4573e. *COMPLIANCE WITH THIS CHAPTER. The board by rule shall develop a system to monitor a podiatrist's compliance with this chapter. The system shall include:*

(1) *procedures for determining the compliance by a podiatrist with an order issued by the board; and*

(2) *a method of identifying and monitoring podiatrists who represent a risk to the public.*

SECTION 16. Chapter 11, Title 71, Revised Statutes, is amended by adding Article 4573f to read as follows:

Art. 4573f. *PODIATRIC PEER REVIEW COMMITTEES*

Sec. 1. *In this article:*

(1) *"Podiatric peer review committee" means the podiatric peer review, judicial, or grievance committee of a podiatric medical society or association that is authorized to evaluate the quality of podiatry services or the competence of a podiatrist. A podiatric peer review committee includes the members, employees, and agents of the committee.*

(2) *"Podiatric medical society or association" means a membership organization of podiatrists that is incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and its subsequent amendments or that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)) and its subsequent amendments.*

Sec. 2. *Except for an action involving fraud, conspiracy, or malice, a podiatric peer review committee is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the committee's duties in investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a podiatrist who is a member of the podiatric medical society or association or another podiatrist, podiatric patient, or third party who requests the services of the committee.*

Sec. 3. *Except as otherwise provided by this article, the proceedings and records of a podiatric peer review committee are confidential and all communications made to a podiatric peer review committee are privileged. However, if a judge makes a preliminary finding that the proceedings, records, or communications of a podiatric peer review committee are relevant to an anticompetitive action or to an action brought under federal civil rights laws, the proceedings, records, or communications are not considered to be confidential to the extent the proceedings, records, or communications are determined to be relevant to that action.*

Sec. 4. *Written or oral communications made to a podiatric peer review committee and the records and proceedings of a peer review committee may be disclosed to:*

- (1) another podiatric peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or
- (4) the Texas State Board of Podiatry Examiners or the state board of registration or licensure of podiatrists in another state.

Sec. 5. (a) The disclosure of confidential podiatric peer review committee information to the affected podiatrist that is relevant to the matter under review by the committee does not constitute a waiver of the confidentiality provisions of this article.

(b) If a podiatric peer review committee takes action that could result in censure or suspension, restriction, limitation, or revocation of a license by the Texas State Board of Podiatry Examiners or a denial of membership or privileges in a health care entity, the affected podiatrist shall be provided a written copy of the recommendation of the podiatric peer review committee and a copy of the final decision, including a statement of the basis for the decision.

Sec. 6. (a) Unless disclosure is required or authorized by law, the records or determinations of a podiatric peer review committee or communications made to a podiatric peer review committee are not subject to subpoena or discovery and are not admissible as evidence in a civil or administrative proceeding. However, a committee may in writing waive the privilege of confidentiality.

(b) The evidentiary privilege under this article may be invoked by any person or organization in a civil or administrative proceeding unless the person or organization has secured a waiver of the privilege executed in writing by the chairman, vice-chairman, or secretary of the affected podiatric peer review committee.

(c) If a podiatric peer review committee, a person participating in peer review, or an organization named as a defendant in any civil action filed as a result of participating in peer review is permitted to use confidential information in the defendant's defense or in a claim or suit under Section 9 of this article, the plaintiff in that proceeding also may disclose the records or determinations of a peer review committee or communications made to a peer review committee to rebut the defendant.

(d) A person who seeks access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a podiatric peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation has not waived any privilege established under this article.

Sec. 7. (a) All persons, including the governing body and medical staff of a health care entity, shall comply with a subpoena issued by the Texas State Board of Podiatry Examiners for documents or information.

(b) The disclosure of documents or information under a subpoena does not constitute a waiver of the confidentiality privilege associated with a podiatric peer review committee proceeding.

(c) Failure to comply with a subpoena constitutes grounds for disciplinary action against the facility or individual by the Texas State Board of Podiatry Examiners.

Sec. 8. A person, health care entity, or podiatric peer review committee that participates in podiatric peer review activity or furnishes records, information, or assistance to a podiatric peer review committee or to the Texas State Board of Podiatry Examiners is immune from any civil liability arising from those acts if the acts were made in good faith and without malice.

Sec. 9. A podiatric peer review committee, a person participating in peer review, or another entity named as a defendant in any civil action filed as a result of the defendant's participation in peer review may file a counterclaim in the pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous or to have been brought in bad faith.

SECTION 17. Subsection (a), Article 4574, Revised Statutes, is amended to read as follows:

(a) The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this chapter. The fees set by the board may be adjusted so that the total fees collected are sufficient to meet the expenses of administering this chapter. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993. ~~[for the administration of this article in amounts not to exceed:~~

[1. Examination . . . . .	\$500]
[2. Reexamination . . . . .	500]
[3. Renewal . . . . .	200]
[4. Duplicate license . . . . .	50]

SECTION 18. Article 4575c, Revised Statutes, is amended to read as follows:

Art. 4575c. CONSUMER INFORMATION. (a) The board shall prepare information of public ~~[consumer]~~ interest describing the ~~[regulatory]~~ functions of the board and the board's procedures by which ~~[consumer]~~ complaints are filed with and resolved by the board. The board shall make the information available to the ~~[general]~~ public and appropriate state agencies.

(b) *The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:*

(1) *on each registration form, application, brochure, or written contract for services of an individual or entity regulated under this chapter;*

(2) *on a sign prominently displayed in the place of business of each individual or entity regulated by the board; or*

(3) *in a bill for service provided by an individual or entity regulated by the board* ~~[Each written contract for services in this state of a licensed podiatrist shall contain the name, mailing address, and telephone number of the board].~~

(c) *The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law* ~~[There shall at all times be prominently displayed in the place of business of each licensed podiatrist a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees may be directed to the board].~~

SECTION 19. Subsection (j), Article 4569, Revised Statutes, and Subsection (g), Article 4570, Revised Statutes, are repealed.

SECTION 20. A contested case pending before the Texas State Board of Podiatry Examiners on the effective date of this Act is transferred to the State Office of Administrative Hearings and actions taken in the proceeding are treated as if taken by the State Office of Administrative Hearings.

SECTION 21. The changes in law made by Section 3 of this Act relating to the requirements for membership on the Texas State Board of Podiatry Examiners apply only to an appointment made on or after the effective date of this Act, and do not affect the entitlement of a member serving on the board on the effective date of this Act to continue to hold office for the remainder of the term for which the person was appointed.

SECTION 22. This Act takes effect September 1, 1993.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 6, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 26, 1993, by a viva-voce vote; passed the House, with amendments, on May 18, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.