TSBPME Case No. 05-120

IN THE MATTER OF		**BEFORE THE TEXAS STATE**
G. JAVIER CAVAZOS, D.P.M. (RGV)	§	**BOARD OF PODIATRIC**
	§	**MEDICAL EXAMINERS**
ADVERTISING	§	
	§	**SITTING IN AUSTIN,**
	§	
LICENSE No. 1263		**TRAVIS COUNTY, TEXAS**

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against G. Javier Cavazos, DPM. By letter dated March 16, 2005 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Cavazos of its intent to investigate complaints, concerns or reports filed against him. Dr. Cavazos was duly notified of the allegations against him and was given the opportunity to present information in rebuttal and to show compliance with the law. Dr. Cavazos has cooperated with the staff of the Board.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Cavazos does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Cavazos understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act.*

The Board and Dr. Cavazos, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an order dispensing with the need for further action in this matter. Dr. Cavazos agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and Conclusions of Law and enters this order:

FINDINGS OF FACT

1. Dr. Cavazos is licensed as a podiatric physician in the State of Texas (License Number 1263) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Complaints were filed against Dr. Cavazos, and he was provided with notice of the complaints and with an opportunity to respond to the complaints, and to show compliance with the law.
3. Dr. Cavazos, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board rules and Board orders.
4. Dr. Cavazos placed the following advertisement in the Brownsville Herald (Sunday, March 6, 2005) entitled " RGV Diabetic Foot & Limb Salvage Centers."

5. Podiatric medicine in the State of Texas is limited to treating the human "foot and ankle."
6. The advertisement purports to treat the "limb", which could be any appendage including the human "legs and arms."
7. Dr. Cavazos is not a Medical Doctor or Doctor of Osteopathic Medicine licensed through the Texas State Board of Medical Examiners. Dr. Cavazos is not licensed as a MD/DO to treat the human "body", beyond the "foot and ankle," as authorized by the Podiatric Medical Practice Act of Texas and associated Board rules.
8. The advertisement entitled "RGV Diabetic Foot & Limb Salvage Centers" is misleading to the public as to the scope of practice for podiatric medicine in the State of Texas.
9. Dr. Cavazos failed to notify the Board of the name "RGV Diabetic Foot & Limb Salvage Centers."

CONCLUSIONS OF LAW

1. Dr. Cavazos is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated Rules of the Board, 22 Tex. Administrative Code § 371.1, et. seq.
2. Texas Occupations Code, §202.001(4) provides that, "'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."
3. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
4. Texas Occupations Code, §202.253(a)(6) provides that, "the board may refuse to issue a license to practice podiatry to a person, for using any advertising statement of a character tending to mislead or deceive the public."
5. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
6. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
7. 22 Texas Administrative Code, §375.1(2) provides that, "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."
8. 22 Texas Administrative Code, §375.2(b) provides that, "a licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing."
9. 22 Texas Administrative Code, §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act

shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."

10. The Findings Of Fact numbers 1 through 9 establish that Dr. Cavazos violated:
(a) 22 Tex. Admin. Code §373.3, which provides in part: The board shall be notified immediately of each such designation of name and address at which each practitioner practices and shall be notified of such authorized designations on the license renewal application identifying the name and degree of the practitioner.
(b) 22 Tex. Admin. Code §375.3(a), which provides in part: A podiatric physician may advertise. A podiatric physician shall not, however, use or participate in the use of any publication, including advertisements, news stories, press releases, and periodical articles, that contains a false, fraudulent, misleading, deceptive, scientifically unsupported or generally unaccepted, or unfair statement or claim.
(c) Texas Occupations Code 202.253(a)(5) in that: he directly or indirectly violated or attempted to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.

ORDER

1. Dr. Cavazos shall pay a fine of $5,000.00 (Five Thousand Dollars and no/100) fully due and payable within 60 (sixty) days after the effective date of this Agreed Order.
2. Dr. Cavazos shall immediately remove or correct the advertisement/publication for all future purposes to remain in compliance with the Podiatric Medical Practice Act of Texas and the Associated Board rules by submitting practice/trade name requests for Board approval.
3. Entry of this Order shall resolve any and all pending matters of investigations before the Board.
4. The terms of this **Agreed Order**, if accepted by the Board, become effective upon such acceptance.
5. If Dr. Cavazos fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act.*,

and the *Tex. Gov't Code Ann., §2001.001 et* seq., the Administrative Procedure Act.

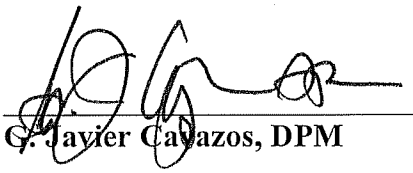
4. Acknowledgment of Entire Agreement. Dr. Cavazos acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Cavazos has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

   G. Javier Cavazos, DPM
   1401 E. Ridge Road, Suite E
   McAllen, TX 78503

   Texas State Board of Podiatric Medical Examiners
   P.O. Box 12216
   Austin, TX 78711-2216

6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, G. JAVIER CAVAZOS, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.



3/21/05

G. Javier Cavazos, DPM **Date**

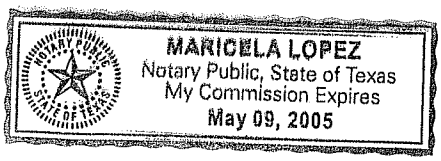
IN THE STATE OF TEXAS §

§

COUNTY OF Hidalgo §

BEFORE ME, on this day personally appeared G. Javier Cavazos known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 21st day of March, 2005.



Maricela Lopez
(Printed Name of Notary Public)

Maricela Lopez
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 2nd day of May, 2005, after a Board vote.

Bradford W. Glass, D.P.M.
Board President

Jim Zukowski, Ed.D.
Executive Director