

TSBPME Case No. 03-106

IN THE MATTER OF  
BRIAN DE YOE, D.P.M.

AGREED ORDER

LICENSE No. 1430

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BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Brian De Yoe, DPM. By letter dated June 30, 2003, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. De Yoe of its intent to investigate complaints, concerns or reports filed against him. Dr. De Yoe was duly notified of the allegations against him. Dr. De Yoe has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. De Yoe hereby waives his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. De Yoe 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. De Yoe, 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. De Yoe 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. De Yoe is licensed as a podiatric physician in the State of Texas (License Number 1430) 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. A complaint was filed against Dr. De Yoe, and he was provided with notice of the complaint and with an opportunity to respond to the complaint and to show compliance with the law.
3. Dr. De Yoe, 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. The patient consented to a "right ankle" operative procedure for surgery on March 15, 2001.

5. An incision was erroneously performed on the “left ankle” for which there was no consent. The incision healed with no complications.
6. Dr. De Yoe failed to indicate in the March 15, 2001 operative note that a wrong site incision occurred; there was no record of the occurrence.

### CONCLUSIONS OF LAW

1. Dr. De Yoe 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, §202.253(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.”
3. 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.”
4. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
5. 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.”
6. The Findings Of Fact numbers 1 through 6 establish that Dr. De Yoe violated: *Texas Occupations Code, §202.253(a)(16)* in that he failed: to practice podiatry in an acceptable manner consistent with public health and welfare.
7. The Findings Of Fact numbers 1 through 6 establish that Dr. De Yoe violated: 22 *Texas Administrative Code §375.2(a)*, which provides: “The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical 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.”
8. The Findings Of Fact numbers 1 through 6 establish that Dr. De Yoe violated: *Texas Occupations Code, §375.11(a)*, which provides: All podiatric physicians shall make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of his or her patients for reference and for protection of the patient for at least five years following the completion of treatment.”
9. The Findings Of Fact numbers 1 through 6 establish that Dr. De Yoe violated:

*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. De Yoe is hereby issued a reprimand.
2. Dr. De Yoe shall complete an additional five (5) hours of Continuing Medical Education in addition to the thirty (30) hours already required by law. The five (5) hours shall consist of medical record keeping courses offered by the Texas Podiatric Medical Association or the Texas Medical Association, and shall be completed by 10/31/07. Proof of completion of the additional hours shall be submitted to the board in the form of authorized certificates by 11/30/07.
3. Entry of this Order shall finally resolve any and all matters or investigations before the Board pending as of the date this Order is approved by the Board.
4. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
5. If Dr. De Yoe 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.
6. Failure to comply with all the terms of this order will subject Dr. De Yoe to further and additional disciplinary and enforcement action.

### **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 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 *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act,*
4. Acknowledgment of Entire Agreement. Dr. De Yoe 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. De Yoe 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:

Dr. Brian De Yoe, DPM  
618 Clara Barton, Suite 2  
Garland, Texas 75042-5731

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, BRIAN DE YOE, 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.**

  
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Brian De Yoe, DPM

4/6/05  
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Date

IN THE STATE OF TEXAS §

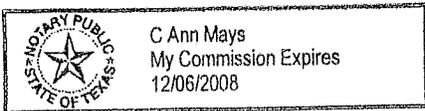
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COUNTY OF Dallas §

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

SIGNED on this the 6<sup>th</sup> day of April, 2005.

C. ANN MAYS  
(Printed Name of Notary Public)



C. Ann Mays  
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.  
Bradford W. Glass, D.P.M.  
Board President

Jim Zukowski, Ed.D.  
Jim Zukowski, Ed.D.  
Executive Director