TSBPME Case No. 05-215

IN THE MATTER OF BENJAMIN LEHMAN, D.P.M.	§	BEFORE THE TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS
	§	
	§	
	§	SITTING IN AUSTIN,
	§	
LICENSE No. 1385		TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Benjamin Lehman, DPM.. By letter dated August 9, 2005 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Lehman of its intent to investigate complaints, concerns or reports filed against him. Dr. Lehman 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. Lehman 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. Lehman does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Lehman 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. Lehman, 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. Lehman agrees to this Order for the purpose of resolving this proceeding. The Board makes the following Findings of Fact and Conclusions of Law and enters this order:

FINDINGS OF FACT

1. Dr. Lehman is licensed as a podiatric physician in the State of Texas (License Number 1385) 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. Lehman, and he was provided with notice of the complaints and with an opportunity to respond to the complaints; to present information to show compliance with the law.
3. Dr. Lehman, 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 Board conducted random Continuing Medical Education (CME) audits for the November 1, 2002 - October 31, 2004 period.

5. Dr. Lehman was randomly selected for a CME audit.
6. Dr. Lehman acknowledged the "Required CME Affirmation" on the annual license renewal form (dated October 20, 2004) indicating that he had "obtained the required 30 hours of approved CME's that are required by Board Rule to renew his license to practice podiatric medicine in Texas."
7. Dr. Lehman failed to obtain the requisite 30 CME hours for the November 1, 2002 - October 31, 2004 audit period.
8. After review of all CME certificates, Dr. Lehman was deemed to be deficient 4.0 hours.

CONCLUSIONS OF LAW

1. Dr. Lehman is required to follow the provisions of the podiatric medical practice act, Texas Occup. Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Admin. Code § 371.1, et. seq..
2. Tex. Occup. 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."
3. Tex. Occup. Code §202.551 provides that, "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.
4. 22 Tex. Admin. 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."
5. The Findings Of Fact numbers 1 through 8 establish that Dr. Lehman violated:
   (a) 22 Tex. Admin. Code §378.1(a), **which provides in part:** Each person licensed to practice podiatric medicine in the State of Texas is required to have 30 hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 30 hours of annual continuing education (CME) may be a course, class, seminar, or workshop in Ethics. It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 30 hour bi-annual requirement meet the standards for CME as set by the Board.
   (b) 22 Tex. Admin. Code §378.1(i) **which provides:** These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 30-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 30 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period. *(Original Audit dates of September 1 through August 31 were changed to November 1 through October 31 to coincide with the renewal*

cycle. This Change was effective November 5, 2003.)

***(c) 22 Tex. Admin. Code §378.1(l)* provides:** If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. 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.

ORDER

1. Dr. Lehman shall pay a fine of $400.00 (Four Hundred Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order.
2. In addition to the requisite 30 hours of CME for the November 1, 2004 - October 31, 2006 audit period, Dr. Lehman is required to obtain an additional 4.0 hours to compensate for the deficiency during the November 1, 2002 - October 31, 2004 CME period.
3. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
4. If Dr. Lehman 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 mutually agreed to 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 the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Lehman 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. Lehman 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:

Benjamin Lehman, DPM
307 S. Washington
Fredericksburg, Texas 78624

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, Benjamin Lehman, 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.

Benjamin Lehman, DPM Date

IN THE STATE OF ~~TEXAS~~ INDIANA §

§

COUNTY OF ELKHART §

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

SIGNED on this the 25th day of AUGUST, 2005.

MARY LEE SPENCER
(Printed Name of Notary Public)

Mary Lee Spencer
Notary Public, in and for the State of ~~Texas~~ INDIANA

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 24th day of October, 2005, after a Board vote.

Bruce Scaldeg, D.P.M.
Board ~~President~~ Vice President

~~Jim Zukowski, Ed.D.~~ Hemant Makan
Executive Director