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No. 94-050A

IN THE MATTER OF  
O. THEODORE NEW, D.P.M.

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BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS

SITTING IN AUSTIN

TRAVIS COUNTY, TEXAS

LICENSE NO. 330

AMENDED AGREED ORDER

BE IT REMEMBERED that on April 12, 1994, came on to be considered the allegations against Oscar Theodore New, D.P.M. By letter dated March 11, 1994, the Texas State Board of Podiatric Medical Examiners gave preliminary notice to Dr. New of its intent to investigate a patient complaint against him. Dr. New was duly notified of the allegations against him. Dr. New denies all allegations and has cooperated with the Board and presented information in rebuttal.

An informal conference was held between the parties on April 12, 1994, and with Dr. New and Michael R. Sharp, attorney for Dr. New, and the following representatives of the Texas State Board of Podiatric Medical Examiners in attendance: Robert A. Lansford, Executive Director, Peter Williams, D.P.M., Board Member, Janie Alonzo, Administrative Assistant, and Cynthia Villarreal-Reyna, Assistant Attorney General.

By his appearance at the informal conference and by his signature on this Amended Agreed Order, and upon acceptance and entry of this Order by the Board, Dr. New does hereby waive right to a formal hearing before the State Office of Administrative Hearings, and judicial review of this Order.

After discussion of the matters previously outlined in this Order, and subsequent communications, the Board and Dr. New, in order to avoid the expense, delay and uncertainty of hearing, have agreed to the entry of an order dispensing with the need for further action in this matter.

Dr. New agrees to the following order for the purpose of this proceeding only, and agrees to the findings of fact, conclusions of law, and the order set out herein:

#### FINDINGS OF FACT

1. Oscar Theodore New is licensed as a podiatrist in the State of Texas with License Number 330.
2. Oscar Theodore New was licensed as a podiatrist in the State of Texas from July 1964 through December 18, 1991 and including until the present time.
3. Dr. New, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatry Practice Act and the applicable rules.
4. Oscar Theodore New has been the subject of a previous Agreed Board Order #91-11-001. The terms and conditions of that Agreed Board Order are set forth in the Order attached hereto. One condition, Number 8, provided that "Dr. New shall not knowingly perform elective, reconstructive bone surgery with the presence of a known systemic or local infectious process."
5. On December 18, 1991, Dr. New performed a bunionectomy on the left foot of patient [REDACTED]. Dr. New's medical records indicate that the left foot had swelling and redness. Fluid at the site of the initial incision on the left foot tested positive for a bacteria.
6. A follow-up visit was not scheduled until two or three weeks after the surgery despite the positive culture. Patient was referred to a booklet/brochure for her questions regarding post operative care.
7. On January 10, 1992, February 3, 1992, and February 14, 1992, Dr. New performed additional surgery on patient's right and left feet.

8. The act of performing surgery on patient's left foot when the foot was red and swollen and later fluid tested positive for a bacteria is in violation of term Number 8 of Agreed Board Order #91-11-001. That Order provided that "a serious violation of this Order within the one year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action."

9. Dr. New informed the Board in August, 1994, that he was no longer practicing podiatry and that, for an indefinite period of time, he would not practice podiatry as a result of a visual impairment.

10. Dr. New has submitted written documentation dated September 7, 1995 that he has closed his office, is "totally disabled" due to loss of vision, and is not practicing podiatry.

#### CONCLUSIONS OF LAW

1. Dr. New's act of performing a bunionectomy on patient [REDACTED] on December 18, 1991, when the foot had an active infection is in violation of Agreed Board Order #91-11-001, the Podiatry Practice Act, and section 375.2(a) of Title 22 of the Texas Administrative Code.

2. Dr. New's failure to schedule a follow-up care appointment with patient [REDACTED] after the bunionectomy on December 18, 1991, until January 3, 1992, despite receiving a positive culture for bacteria is in violation of the Podiatry Practice Act and section 375.2(a) of Title 22 of the Texas Administrative Code.

3. Dr. New admits his inability to practice podiatry with reasonable skill and safety to patients as a result of his particular physical condition affecting his vision. The practice of podiatry while affected by this physical condition would be in violation of the Podiatry Practice Act and section 375.2(a) of Title 22 of the Texas Administrative Code.

#### ORDER

THEREFORE, PREMISES CONSIDERED, License No. 330, issued to Oscar Theodore New, D.P.M. is ordered suspended. The suspension ordered in August, 1994, hereby remains in effect through August 12, 1996, and continues and is hereby extended for the period of time ending two (2) years following the date that Dr. New resumes the practice of podiatry. All such extended portion of the suspension is probated except for the first sixty (60) days following the date on which Dr. New resumes the practice of podiatry, provided that Dr. New complies with the following conditions:

I. **With respect to the violation of Board Order No. 91-11-001, and concerning Board Order 94-050:**

1. Dr. New shall not knowingly perform elective, reconstructive bone surgery with the presence of a known systemic or local infectious process.
2. Upon resuming the practice of podiatry, Dr. New, **between 24 and 48 hours** thereafter, shall begin to observe the requirements of the **sixty (60) day** non-probated portion of the suspension mentioned herein.
3. During the **60-day** suspension period without probation, Dr. New shall not perform any tasks or duties that require a license from the Board;
4. Following the **60-day** suspension period without probation, Dr. New shall not perform any surgical tasks or duty for forty-five (45) days;
5. After the initial **60-day** extended period of suspension and additional 45-day period during which Dr. New may not perform surgery, Dr. New will be subjected, during the remainder of the two (2) year probation of the extended suspension, to random on-site monitoring of all surgical procedures conducted or scheduled by a Board member or a licensed podiatrist selected by the Board.
6. During the two (2) year extended period of suspension and probation, post-operative and follow-up care shall be randomly monitored on-site by a Board member or a licensed podiatrist selected by the Board;
7. Dr. New shall perform 20 hours of continuing education for each year of the suspension and probation. These continuing education hours shall be in addition to the hours required for license renewal. The hours must be accomplished by attendance of seminars approved by the Council on Continuing Education of the American Podiatry Medical Association. The seminars must be pre-approved by the Board. The seminars and courses shall focus on ten hours in infections and infectious diseases, and ten hours in post-operative care.
8. During the two (2) year extended period of suspension and probation, Dr. New will submit quarterly reports to the Board detailing his compliance with the conditions of probation.
9. During the **two (2) year extended period of suspension and probation**, Dr. New shall appear annually before the Board to discuss his compliance with the conditions of probation.
10. During the period of this Amended Agreed Order, Dr. New will obey and abide by all laws of the Board, and Dr. New shall be subject to unannounced, on-site monitoring visits by a Board member or a podiatrist selected by the Board.

11. Dr. New agrees that a violation of this Amended Order within the period of suspension or probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action. The Board represents that there are no informal or formal complaints pending or in its files that potentially may be deemed to violate this probation as of the date of signature.

II. In recognition of the suspension order in Article I, above, and with respect to Dr. New's admitted inability to practice podiatry with reasonable care and safety due to his physical condition, Dr. New agrees to:

1. the suspension of his license, which continues in effect and shall continue in effect until the passing of the two (2) years that follow the date on which Dr. New resumes the practice of podiatry.

2. Dr. New understands and agrees that this suspension is non-probated and remains in effect, and that he shall not resume the practice of podiatry until:

- a. Dr. New affirmatively petitions the Board for reinstatement;
- b. Dr. New submits to a physical examination by a physician approved by the Board;
- c. the physician makes an evaluation, costs to be borne by Dr. New, on his fitness to practice podiatry and any other information which the Board in its sole discretion deems appropriate concerning the actions at issue in this Amended Agreed Board Order;
- d. the board receives all information necessary for its decision as to whether or not to lift the suspension and that the physician may furnish any information to the Board, including, but not limited to all physical evaluations diagnosis, and test results; and
- e. the Board determines that Dr. New is able to return to the practice of podiatry.
- f. Dr. New notifies the Board of the date on which he intends to resume the practice of podiatry. Such notice shall be received by the Board no later than ten (10) days before the date he intends to resume practice.

3. Dr. New agrees that any information received from the physician may be considered by the Board in its decision regarding Dr. New in his petition for the lifting of the suspension. To that effect, Dr. New shall sign releases, permitting all medical information to be released to the Board for their consideration regarding the suspension and the reinstatement of Dr. New's license.

4. During the period of suspension, Dr. New shall not engage in the practice of podiatric medicine, which Dr. New understands includes, but is not limited to diagnosing or treating himself, his family or any other persons.

5. Unless already surrendered, Dr. New shall surrender his D.E.A. and D.P.S. licenses. Such surrender shall proceed within five (5) days from the Board's acceptance of this Amended Agreed Order. The documentation evidencing surrender of the licenses shall be forwarded by Dr. New to the Board within twenty (20) days after the Board's acceptance of this Amended Agreed Order. Documentation shall be sent to the Board, as required above, regardless of when the licenses were surrendered.

6. Before Dr. New resumes the practice of podiatry as a result of him no longer being visually impaired, Dr. New shall complete all of the CME requirements of all prior Agreed Board Orders, including the original Agreed Order No. 94-050, which this Order amends. All CME hours and other actions required by Board order and Board statute and rules for the reinstatement of licenses shall be accomplished before the suspension is lifted.

7. Twenty-four to forty-eight hours after resuming his practice, Dr. New shall begin to observe the requirements of the extended portion of the suspension of Article I, above.

**THIS ORDER DOES NOT PROHIBIT THE TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS FROM EXERCISING ITS REGULATORY FUNCTIONS AND FURTHER THAT THE TEXAS STATE BOARD OF PODIATRIC EXAMINERS WILL BE ALLOWED ACCESS TO THE ESTABLISHMENT OF DR. NEW TO ENSURE THAT THE AMENDED ORDER IS IN EFFECT.**

**THIS ORDER IS A PUBLIC RECORD.**

I, OSCAR THEODORE NEW, D.P.M., HAVE READ AND UNDERSTAND THE FOREGOING AMENDED AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY.

I UNDERSTAND THIS AMENDED AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 3-14, 1996

  
Oscar Theodore New, D.P.M.

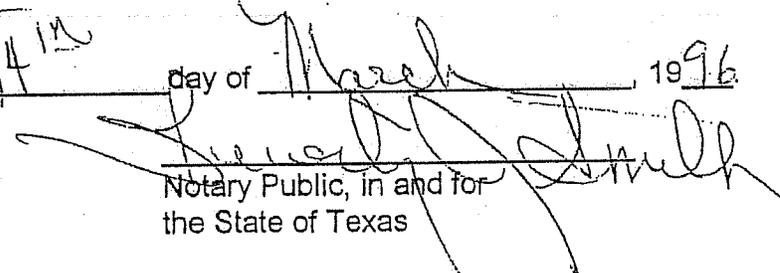
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COUNTY OF Harris

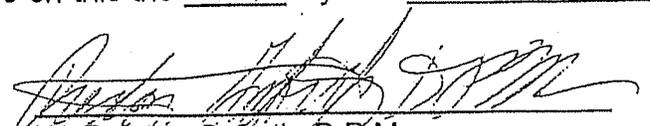
BEFORE ME, on this day personally appeared Oscar Theodore New, D.P.M. known to me, who, first, being duly sworn, signed the foregoing Amended Agreed Order in my presence.

SIGNED on this the 14<sup>th</sup> day of March, 1996

  
Notary Public, in and for  
the State of Texas

SIGNED AND ENTERED by the Presiding Officer of the Texas State

Board of Podiatric Medical Examiners on this the 28<sup>th</sup> day of MARCH,  
1996.

  
W. Preston Goforth, D.P.M.,  
President, Texas State Board of Podiatric  
Medical Examiners