

T EXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

PHYSICAL ADDRESS: 333 GUADALUPE, TOWER II, SUITE 320, AUSTIN, TEXAS 78701

MAILING ADDRESS: P.O. BOX 12216, AUSTIN, TEXAS 78711

NATIONAL TOLL FREE COMPLAINT HOTLINE: 1-800-821-3205

VOICE: 512-305-7000 FAX: 512-305-7003



HEMANT MAKAN
EXECUTIVE DIRECTOR / INVESTIGATOR

Wednesday, June 17, 2009

Anthony P. Noreiga, DPM
900 Ellis Avenue
Lufkin, Texas 75904

RE: COMPLIANCE NOTICE & NPDB-HIPDB REPORT STATEMENT
November 1, 2005 – October 31, 2007 CME Audit Notice
TSBPME Case No. 09-037 (Agreed Order)

Dear Dr. Noreiga,

Pursuant to Board Rule §378.1 "Continuing Education Requirement," by certified "Notice" (cover letter and Agreed Order) dated February 9, 2009, regarding your FY 2008 CME audit, you were informed that review of certificates submitted to the Board indicated you failed to obtain the requisite 30 hours for the CME biennium of "**November 1, 2005 – October 31, 2007**;" you were deficient 3.50 hours. The penalty for not complying with the Board's CME Rules was a fine in the amount of \$350.00, issued and enforced via an Agreed Order.

A proposed Agreed Order specifying "Findings of Fact" and "Conclusions of Law" regarding Case Number 09-037 was submitted to you. The Agreed Order set out penalties as noted under "Order;" the \$350.00 penalty was "Non-Negotiable." You had the option to sign the Agreed Order promptly before a Notary Public and return it to our office within twenty (20) calendar days upon receipt of the "Notice." The Agreed Order would become effective upon acceptance by the full Board and signed by the Board President. You also had the option to contest the Agreed Order and an opportunity to request an Informal Consent Hearing.

On February 20, 2009 you promptly executed the Agreed Order before a Notary Public and the same was received by the Board on February 23, 2009. At its March 30, 2009 Board Meeting, the Texas State Board of Podiatric Medical Examiners voted unanimously to approve and enter the signed/notarized Agreed Order regarding Case No. 09-037. A copy of the executed Agreed Order was submitted to you by letter dated May 3, 2009 and the same was reported to the federal National Practitioner Databank – Healthcare Integrity Protection Databank (NPDB-HIPDB).

All Board Actions are reportable to the NPDB-HIPDB as required by Federal Law (in part, TITLE IV OF PUBLIC LAW 99-660; the Health Care Quality Improvement Act of 1986, as amended 42 USC Sec. 11101 01/26/98). Board Actions, as a service to the citizens of Texas (Open Record), are

published on the Board's website pursuant to Texas Occupations Code §202.201 "PUBLIC INTEREST INFORMATION" which provides: "(a) The Board shall prepare information of public interest describing the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board. (b) The Board shall make the information available to the public and appropriate state agencies." All TSBPME investigations resulting in sustained violations of the Podiatric Medical Practice Act of Texas, the Board Rules and any other applicable law are adjudicated via a Board Order/Agreed Order. Those Orders are approved and executed at a Public Meeting, at which time they become a Public/Open Record; Permanent Record (Board Rule §376.27(d)).

REQUIRED PRESENT COMPLIANCE

As a result of March 30, 2009 execution of the Agreed Order:

1. Your \$350.00 fine payment was due by June 30, 2009.
2. In addition to the requisite 30 hours of CME for the November 1, 2007 – October 31, 2009 biennium (present CME period), you were required to obtain an additional 3.5 hours to compensate for the deficiency during the November 1, 2005 – October 31, 2007 CME period for a total of 33.5 hours due by November 30, 2009.

In response, the Texas State Board of Podiatric Medical Examiners is in receipt (May 20, 2009; June 9, 2009 and June 17, 2009) of the following from you:

1. Total Fine Payment: \$350.00 (Check No. 7032; Bank of America; received May 20, 2009); to be deposited into the State Treasury.
2. Continuing Education:
 - a. NW Podiatric Foundation; 05/19-20/2006; 16 hours (towards the already executed penalized November 1, 2005 – October 31, 2007 CME period; received afterwards; prior receipt of which would have deemed you to have a compliant total of 42.5 hours as opposed to the deficient 26.5 hours; hence 3.5 hours of which you were penalized).
 - b. Cardiovascular Institute of the South; 09/10/2008; 7 hours (present CME period)
 - c. Cardiovascular Institute of the South; 09/11/2008; 7 hours (present CME period)
 - d. Cardiovascular Institute of the South; 09/12/2008; 7 hours (present CME period)
 - e. Cardiovascular Institute of the South; 09/13/2008; 3 hours (present CME period)
 - f. Podiatry Institute; 04/02-04/2009; 15 hours (present CME period)

TOTALS: With the hours referenced in "a" above, you would have been compliant with the audited November 1, 2005 – October 31, 2007 CME period upon timely submission. Your letter to the Board dated June 9, 2009 recognizes this oversight and assumes responsibility. With the (now updated) attainment of 42.5 hours for the November 1, 2005 – October 31, 2007 CME period, you have a carry-over of 10 (maximum) hours for the present November 1, 2007 – October 31, 2009 CME period. With the hours referenced in "b-f" above, together with the 10 (maximum) carry-over hours (of the 12.5), you then have a total of 49 hours; well in excess of the present 30-hour requirement. That then leaves you with a carry-over balance of

10 (maximum) hours (of the 19) for the future November 1, 2009 – October 31, 2011 CME period.

You are FULLY COMPLIANT with the terms of Agreed Order Case No. 09-037.

Nevertheless, since the Agreed Order was duly executed prior to the late submission of additional hours for the audited November 1, 2005 – October 31, 2007 CME period, by operation of law/rule, the Agreed Order remains a permanent public record. Your June 17, 2009 statement of these facts to the NPDB-HIPDB is noted and the Board has been notified of the report change by the NPDB-HIPDB; the case file has been updated. To reflect your initial oversight, yet **OVERALL COMPLIANCE**, with the terms of Agreed Order Case No. 09-037, the Board's website will include a copy of this correspondence with the Agreed Order to evidence compliance for any person/entity (third party) reviewing the record.

Because Board Orders are a permanent record, please be sure to retain a copy of this letter with your own records in the event a third party requests the status of your compliance. In addition, this letter will serve as proof of CME for the November 1, 2007 – October 31, 2009 & November 1, 2009 – October 31, 2011 biennia/periods in the event you are selected for a random CME audit in the future.

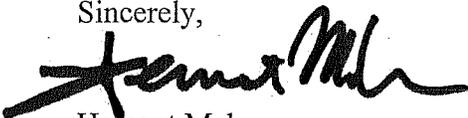
FUTURE COMPLIANCE

Be advised, that on March 4, 2008, the Board Rules changed to now require 50 hours of CME. We sent a notice to all licensees in September 2008 on the yellow License Renewal Postcard directing everyone to visit the Board's website at <http://www.foot.state.tx.us>. The Board has allowed again for an interim period to allow all licensees the opportunity to get caught-up with this change. Since you are an "ODD YEAR" licensee, you will need to begin to obtain your (regular) 50 hours of CME for the November 1, 2009 – October 31, 2011 period and thereafter. You can also click on the "Continuing Education" link on the website for more information, Q&A and course opportunities. You still have time for these (regular) future changes as it applies to your "ODD YEAR" license. Again, for the future 50-hour November 1, 2009 – October 31, 2011 period, you have a 10-hour carry-over balance of the aforementioned excess 19 hours (which leaves you with 40 regular hours to be obtained by October 31, 2011).

Please retain a copy of this letter with your CME records should you be audited in the future.

On behalf of the Board, thank you for your cooperation, understanding and accountability throughout this process.

Sincerely,



Hemant Makan
Executive Director
Investigator
(512)-475-3301

Hemant.Makan@foot.state.tx.us

CC: Janie Alonzo, Staff Services Officer – Treasury Deposit

TSBPME Case No. 09-037

IN THE MATTER OF
ANTHONY P. NOREIGA, D.P.M.

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BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

SITTING IN AUSTIN,

LICENSE No. 1232

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Anthony P. Noreiga, DPM. By letter dated January 26, 2009 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Noreiga of its intent to investigate complaints, concerns or reports filed against him. Dr. Noreiga 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. Noreiga 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. Noreiga does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Noreiga 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. Noreiga, 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. Noreiga 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. Noreiga is licensed as a podiatric physician in the State of Texas (License Number 1232) 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. Noreiga, 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. Noreiga, 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, 2005 - October 31, 2007 period.
5. Dr. Noreiga was randomly selected for a CME audit.
 6. Dr. Noreiga acknowledged the "Required CME Affirmation" (October 22, 2007) on the annual license renewal form 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. Noreiga failed to obtain the requisite 30 CME hours for the November 1, 2005 - October 31, 2007 audit period.
 8. After review of all CME certificates, Dr. Noreiga was deemed to be deficient 3.50 hours.

CONCLUSIONS OF LAW

1. Dr. Noreiga 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 §376.3(a) 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. Noreiga 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(h) 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(k) 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. Noreiga shall pay a fine of \$350.00 (Three Hundred Fifty 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, 2007 - October 31, 2009 audit period, Dr. Noreiga is required to obtain an additional 3.50 hours to compensate for the deficiency during the November 1, 2005 - October 31, 2007 CME period.
3. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
4. If Dr. Noreiga 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. Noreiga 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. Noreiga 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:

Anthony P. Noreiga, DPM
900 Ellis Avenue
Lufkin, Texas 75904

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, Anthony P. Noreiga, 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.



Anthony P. Noreiga, DPM

2/17/09

Date

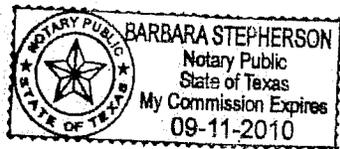
IN THE STATE OF TEXAS §

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COUNTY OF Angelina §

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

SIGNED on this the 20th day of February, 2009.



Barbara Stepherson
(Printed Name of Notary Public)

Barbara Stepherson
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 30th day of March, 2009, after a Board vote.

Doris Couch
Ms. Doris Couch
Board President

Hemant Makan
Hemant Makan
Executive Director