

TSBPME Case No. 04-126

IN THE MATTER OF
VINCENT RASCON, D.P.M

ADVERTISING

LICENSE No. 1390

§
§
§
§
§

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 Vincent Rascon, DPM.. By letter dated November 12, 2004 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Rascon of its intent to investigate complaints, concerns or reports filed against him. Dr. Rascon 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. Rascon 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. Rascon does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Rascon 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. Rascon, 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. Rascon agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the Findings of Fact and Conclusions of Law set out in this Order. The Board makes the following Findings of Fact and Conclusions of Law and enters this order:

FINDINGS OF FACT

1. Dr. Rascon is licensed as a podiatric physician in the State of Texas (License Number 1390) 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. Rascon, 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. Rascon, 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. Rascon placed an advertisement in the San Angelo Standard Times

- (Wednesday, April 28, 2004) where he inappropriately identified himself as a Fellow of the American College of Foot and Ankle Surgeons.
5. The advertisement dated Wednesday; April 28, 2004 states "Vincent P. Rascon, DPM, FACFAS, FABPOPPM." This statement is false, because Dr. Rascon is not listed as a fellow of the American College of Foot and Ankle Surgeons after conducting a website verification.

CONCLUSIONS OF LAW

1. Dr. Rascon 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)(4) provides that, "the board may refuse to issue a license to practice podiatry to a person, for engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public."
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, §202.501(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."
5. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
6. 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."
7. 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."
8. The Findings Of Fact numbers 1 through 5 establish that Dr. Rascon violated:
(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) 22 Tex. Admin. Code §375.3(e), which provides in part: A podiatric physician may advertise or publish the name of any board of certification under which the podiatric physician has fully and validly become certified provided, however, that: (1) The full name of the certifying board is included in the publication; that is, no advertisement or publication may include the bare phrase "board certified", or the like; (2) It shall be the duty of each podiatric physician to

timely ascertain before publication of any such advertisement or public communication whether the certifying board he wished to advertise is in fact approved or recognized by the Council of Podiatric Medical Education of the American Podiatric Medical Association.

ORDER

1. Dr. Rascon shall pay a fine of \$500.00 (Five Hundred Dollars and no/100) fully due and payable within 60 (sixty) days after the effective date of this Agreed Order.
2. Dr. Rascon 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.
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. Rascon 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

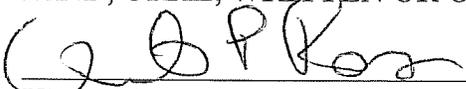
1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any 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. Rascon 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. Rascon 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:

Vincent Rascon, DPM
3001 West Illinois, Suite 1B1
Midland, Texas 78701

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, VINCENT RASCON, 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.



Vincent Rascon, DPM

12/10/04
Date

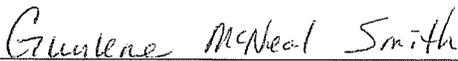
IN THE STATE OF TEXAS §

§

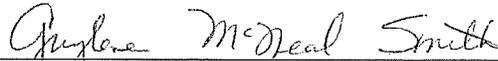
COUNTY OF Edgar §

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

SIGNED on this the 14th day of December, 2004.



(Printed Name of Notary Public)

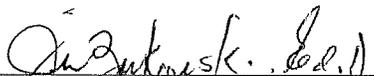


Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 28th day of February, 2005, after a Board vote.



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



Jim Zukowski, Ed.D.
Executive Director