

TSBPME Case No. 06-074

**IN THE MATTER OF
MITCHELL L. ROGERS, D.P.M.**

**IMMEDIATE
TEMPORARY SUSPENSION**

LICENSE No. 1585

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**BEFORE THE TEXAS STATE
BOARD OF PODIATRIC**

MEDICAL EXAMINERS

DISCIPLINARY PANEL

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

ORDER OF IMMEDIATE TEMPORARY SUSPENSION

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Mitchell L. Rogers, DPM. On April 26, 2006 the Disciplinary Panel of the Texas State Board of Podiatric Medical Examiners (the "Panel") voted to Temporarily Suspend License No. 1585 effective immediately in accordance with Texas Occupations Code §202.510.

The Disciplinary Panel makes the following Findings of Fact and Conclusions of Law and enters this Order:

FINDINGS OF FACT

1. Dr. Rogers is licensed as a podiatric physician in the State of Texas (License Number 1585) 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. On April 7, 2006, Dr. Rogers was arrested via warrant for one count of Indecent Exposure (Texas Penal Code §21.08) for an incident occurring at the Oakwood Nursing and Rehabilitation Center in Arlington, TX.
3. On April 7, 2006, Dr. Rogers was arrested via warrant for one count of Public Lewdness (Texas Penal Code §21.07) for an incident occurring at the Oakwood Nursing and Rehabilitation Center in Arlington, TX.
4. The alleged incidents occurred while treating a patient.
5. It is alleged that Dr. Rogers has done this before with other patients during doctor-patient visits.
6. The patient has provided statements consistent with the criminal charges lodged against Dr. Rogers.
7. The incidents alleged to have occurred constitute a continuing threat to the public welfare and directly relate to the duties and responsibilities of Dr. Rogers' license as a podiatric physician.

CONCLUSIONS OF LAW

1. Dr. Rogers 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 Texas 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. Texas Occupations Code, §202.510(b) provides that if the Disciplinary Panel determines from the evidence presented to the panel that a person licensed to practice podiatry would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.
 6. 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.”
 7. The Findings of Fact numbers 1 through 7 establish that Dr. Rogers 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.
 8. The Findings of Fact numbers 1 through 7 establish that Dr. Rogers violated 22 Texas Administrative Code §375.2(a), which provides in part: the health and safety of patients shall be the first consideration of the podiatric physician.
 9. The Findings of Fact numbers 1 through 7 establish that Dr. Rogers violated 22 Texas Administrative Code §383.1(a), which provides in part: sexual misconduct is behavior that exploits the physician-patient relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual.
 10. The Findings of Fact numbers 1 through 7 in conjunction with Conclusions of Law number 8 and 9 establish that Dr. Rogers violated Texas Occupations Code §202.253(a)(5) in that he violated the Podiatric Medical Practice Act and Board rules adopted under the Act.

ORDER

1. Dr. Rogers’ license to practice podiatric medicine is hereby Immediately Temporarily Suspended commencing on the day the Order is entered by the Board’s Disciplinary Panel. Dr. Rogers shall not treat or offer to treat any patient, whether male or female.
2. Dr. Rogers’ podiatric practice is to remain closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and Dr. Rogers may not participate

for income in any professional activity that is directly related to the diagnosis or treatment of a patient. Dr. Rogers may refer his patients to another practitioner for treatment or consultation during the term of the Immediate Temporary Suspension, but Dr. Rogers shall not derive any income from such referrals.

3. Dr. Rogers may keep his office open for the purposes of arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters if not directly related to the diagnosis and treatment of patients. Dr. Rogers shall not offer and shall not accept to consult with, diagnose or treat a patient.
 4. If Dr. Rogers shares office space with a podiatrist, the other podiatrist shall be allowed to continue his/her practice normally, but Dr. Rogers shall not consult regarding the diagnosis or treatment of patients and shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.
 5. Dr. Rogers shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable prescription records.
1. The terms of this **Immediate Temporary Suspension Order** become effective upon approval of the Board's Disciplinary Panel.

GENERAL PROVISIONS

1. Effective Date. This **Order** shall take effect and become binding upon the approval by the Panel.
2. No Waiver. No waiver of any of the terms of this **Order** shall be valid unless in writing. No waiver of default of any terms of the **Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This **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; Tex. Occup. Code Chapter 53 and Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.
4. Notice. Any notice to be given under the terms of this **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:

Mitchell L. Rogers, DPM
2021 Justin Rd.#132
Flower Mound, TX 75028

Texas State Board of Podiatric Medical Examiners
Investigations Division
P.O. Box 12216
Austin, TX 78711-2216

5. Upon approval of this **Order** by the Disciplinary Panel, the Presiding Officer of the Panel and the Executive Director are authorized to sign the Order on the Panel's behalf.

IN THE STATE OF TEXAS

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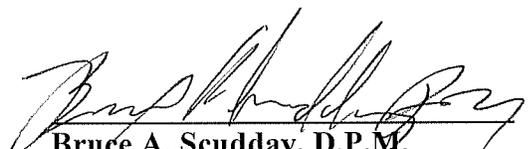
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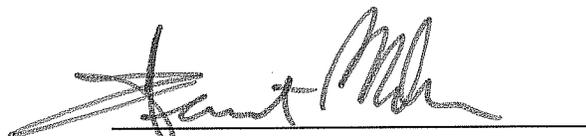
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COUNTY OF TRAVIS

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APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 26th day of April, 2006, after a vote of the Disciplinary Panel. In enforcing this Order, the Panel effectively and immediately Temporarily Suspends License Number 1585.


Bruce A. Scudday, D.P.M.
Presiding Panel Member


Hemant Makan
Executive Director