

TSBPME Case No. 04-088

IN THE MATTER OF  
JOSEPH SMITH, D.P.M.

AGREED ORDER

LICENSE No. 0514

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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 Joseph Smith, DPM. By letter dated July 12, 2004, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Smith of its intent to investigate complaints, concerns or reports filed against him. Dr. Smith was duly notified of the allegations against him. Dr. Smith has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Smith hereby waives his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Smith 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. Smith, 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. Smith agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and Conclusions of Law and enters this Order:

FINDINGS OF FACT

1. Dr. Smith is licensed as a podiatric physician in the State of Texas (License Number 0514) 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. Smith, 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. Smith, 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. Smith saw the patient on 01/20/2004 with a complaint of a painful plantar wart to her right heel.
5. Dr. Smith obtained a minimal medical history which stated that the patient had

- systemic lupus and was under doctor's care.
6. A limited physical exam on the patient documented pedal pulses and lesions, but not size or appearance.
  7. The patient's mother signed a written surgical consent form.
  8. Dr. Smith performed surgical curettage of the right heel growth.
  9. A pathology report did confirm the presence of verruca plantaris.
  10. The medical record contained documentation for postoperative care; the patient failed to return for care.
  11. A notation on 01/27/2004 in the patient's record was found to indicate that the patient was phoned and a message left.
  12. On 01/27/2004, the patient was seen by Dr. Hameed, MD with pain to heel that was not controlled with prescribed pain medication.
  13. The patient was diagnosed with right heel ulcer and a dressing was applied.
  14. Dr. Hameed saw the patient on 02/09/2005 with complaint of pain, fever, and chills.
  15. Differential diagnosis by Dr. Hameed included cellulitis and osteomyelitis.
  16. The patient was provided a stat referral to Dr. Moore (plastic surgeon) who saw the patient on the same day.
  17. The patient saw Dr. Moore on two more visits that documented adequate healing of ulcer.
  18. The billing records of Dr. Smith for 01/20/2004 office visit by the patient indicate inaccurate coding of CPT codes 99203, 11402, 64450, and 20550 based on the medical records available.

### CONCLUSIONS OF LAW

1. Dr. Smith 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)(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. 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."
6. The Findings Of Fact numbers 1 through 18, in totality, establish that Dr. Smith 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.

7. The Findings Of Fact numbers 1 through 18, in totality, establish that Dr. Smith violated: *Texas Administrative Code §375.11(a)*, which provides in part: all podiatric physicians shall make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of his or her patients for reference and for protection of the patient.
8. The Findings Of Fact numbers 1 through 18, in totality, establish that Dr. Smith violated: *Texas Occupations Code, §202.253(a)(5)* in that he: directly or indirectly violated or attempted to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.

### ORDER

1. Dr. Smith shall pay an administrative penalty of \$1,000.00 (One Thousand Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order.
2. Dr. Smith shall complete an additional fifteen (15) hours of Continuing Medical Education in addition to the thirty (30) hours already required by law. The fifteen (15) hours shall consist of courses in medical record keeping, billing practices and risk management offered by the Texas Podiatric Medical Association or the Texas Medical Association, and shall be completed by 10/31/2006. Proof of completion of the additional hours shall be submitted to the board in the form of authorized certificates by 11/30/2006.
3. Entry of this Order shall finally resolve any and all matters or investigations before the Board pending as of the date this Order is approved by the Board.
4. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
5. If Dr. Smith 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.
6. Failure to comply with all the terms of this order will subject Dr. Smith to further and additional disciplinary and enforcement action.

### 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 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 *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Smith 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. Smith has executed this instrument freely and of his own accord.

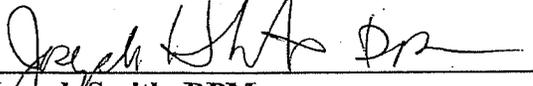
5. **Notice.** Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Dr. Joseph Smith, DPM  
3134 Highway 35 South  
Alvin, TX 77511

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, JOSEPH SMITH, 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.**

  
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Joseph Smith, DPM

6-28-05  
\_\_\_\_\_  
Date

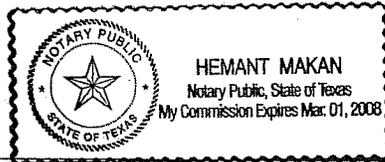
IN THE STATE OF TEXAS §

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COUNTY OF Travis §

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

SIGNED on this the 28<sup>th</sup> day of JUNE, 2005.



(Printed Name of Notary Public)  
Notary Public Seal

[Signature]  
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 8<sup>th</sup> day of August, 2005, after a Board vote.

[Signature]  
Bradford Glass, D.P.M.  
Board President

[Signature]  
Jim Zukowski, Ed.D  
Executive Director