

TSBPME Case No. 14-038

**IN THE MATTER OF
MARK H. TOMPKINS, D.P.M.**

REPRIMAND

of LICENSE No. 1301

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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 Mark H. Tompkins, DPM. By letter dated April 15, 2014 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Tompkins of its intent to investigate complaints, concerns or reports filed against him. Dr. Tompkins was duly notified of the allegations against him. Dr. Tompkins has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Agreed Order, and upon acceptance and entry of this Agreed Order by the Board, Dr. Tompkins does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Agreed Order. Dr. Tompkins 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. Tompkins, 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. Tompkins 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 Agreed Order:

FINDINGS OF FACT

1. Dr. Tompkins is licensed as a podiatric physician in the State of Texas (License Number 1301) 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. A complaint was filed against Dr. Tompkins, and he was provided with notice of the complaint and with an opportunity to respond to the complaint and to show compliance with the law.
3. Dr. Tompkins has demonstrated a personal substance abuse problem and is currently undergoing professional treatment.

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**TEXAS PODIATRIC
MEDICAL EXAMINERS**

CONCLUSIONS OF LAW

1. Dr. Tompkins 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)(3) provides that: “The Board may refuse to issue a license to practice podiatry to a person, for engaging in habits of intemperance or drug addiction that in the Board's opinion would endanger the health, well-being, or welfare of patients.”
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 §202.253(a)(15) provides that: “The Board may refuse to issue a license to practice podiatry to a person, for being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition.”
5. 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.”
6. Texas Occupations Code §202.5015 provides that: “A license holder who engages in conduct described by Section 202.253 violates this chapter.”
7. 22 Texas Administrative Code, §375.3(a) provides that: “The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective to the podiatric profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.”
8. 22 Texas Administrative Code, §376.3(a) provides that: “A podiatric physician who violates a Board rule, order, or any provision of the Act shall be subject to the following disciplinary action: (3) a reprimand by the Board which may be either public or private.”
9. The Findings of Fact numbers 1 through 3 establish that Dr. Tompkins violated: Texas Occupations Code, §202.253(a)(3)(5)(15) and 22 Texas Administrative Code, §375.3(a) in that he engaged in habits of intemperance or drug addiction.

ORDER

1. Dr. Tompkins is hereby issued a Reprimand, subject to the following conditions.
2. For a period of eighteen (18) months commencing on the day after Dr. Tompkins signs the Agreed Order, Dr. Tompkins shall not move to vacate the terms of this Agreed Order.
3. For a period of twelve (12) months commencing on the day after the Agreed Order is entered by the Board, Dr. Tompkins' podiatric practice is to remain closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and Dr. Tompkins may not participate for income in any professional activity that is related to the diagnosis or treatment of a patient. Dr. Tompkins may refer his patients to another practitioner for treatment or consultation during the twelve (12) month time period, but Dr. Tompkins shall not derive any income from such referrals.
4. During the twelve (12) month time period, Dr. Tompkins 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. Tompkins shall not offer and shall not accept to consult with, diagnose or treat a patient.
5. During the twelve (12) month time period, Dr. Tompkins is allowed to renew his Texas Podiatry License No. 1301.
6. Dr. Tompkins shall comply with all provisions found in 22 Texas Administrative Code, §378.1 "Continuing Education Requirement".
7. During the twelve (12) month time period, on a quarterly basis (to be received by June 1, 2015; September 1, 2015, December 1, 2015 and March 1, 2016) Dr. Tompkins shall submit a complete physical, hair follicle tests and toxicology screens to demonstrate that he is drug free and physically fit to practice podiatric medicine. Dr. Tompkins may choose the appropriate physician (MD/DO) to conduct these tests. The test results should be mailed directly to the Board from the physician's office or from Dr. Tompkins' attorney. Dr. Tompkins is responsible for incurring the costs of all testing.
8. At the completion of the twelve (12) month time period, Dr. Tompkins shall physically appear before the Board at its next regularly scheduled meeting to attest to his sobriety and to establish competency prior to any return to podiatric practice. The Board may issue a modified license via Order upon proof of successful completion of the terms of this Agreed Order, to include Dr. Tompkins successfully sitting for and achieving a passing score on the TSBPME Jurisprudence License Exam.
9. Dr. Tompkins shall remain sober, abstain from the use of illicit drugs and alcohol and remain compliant with professional counseling/treatment.
10. Dr. Tompkins 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 Agreed Order, and to ensure proper medical records are maintained, including applicable billing records.

11. Failure to comply with the terms of this Agreed Order shall result in an automatic suspension of Dr. Tompkins License No. 1301 under the authority of the Board's Investigative Committee to include revocation of license. The Board may seek judicial relief to enforce the terms of this Agreed Order.
12. Should Dr. Tompkins fail to comply with the terms of this Agreed Order, he shall return to the Board any certificate or other document evidencing licensure, expired or current. Failure to return such documentation may result in the Board seeking injunctive relief against Dr. Tompkins to prevent him from practicing podiatric medicine as it is defined in Tex. Occup. Code Ann., §202.001 et seq.
13. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
14. If Dr. Tompkins fully complies with the terms of this Agreed Order, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Agreed Order, other than to issue a modified Order as referenced in Order term number 8.

GENERAL PROVISIONS

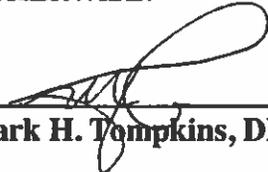
1. **Effective Date.** This Agreed Order shall take effect and become binding upon the approval by the Board.
2. **No Waiver.** No waiver of any of the terms of this Agreed Order shall be valid unless in writing. No waiver of default of any terms of the Agreed Order shall be deemed a waiver of any subsequent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

Mark H. Tompkins, DPM
C/O Tony Cobos, JD
Sharp & Cobos, LLP
4705 Spicewood Springs Rd.
Suite #100
Austin, TX 78759

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 Agreed Order on the Board's behalf.

I, MARK H. TOMPKINS, DPM, HAVE READ AND UNDERSTAND THE FOREGOING AGREED 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.



Mark H. Tompkins, DPM

2/5/15

Date

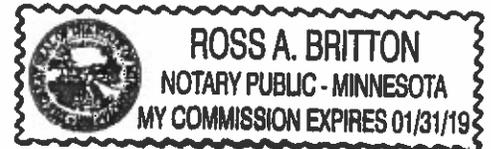
IN THE STATE OF MN §

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COUNTY OF Ramsey §

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

SIGNED on this the 5th day of Feb, 2015.



Ross A. Britton
(Printed Name of Notary Public)



Notary Public, in and for the State of MN

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 20th day of April, 2015, after a Board vote.



Travis A. Motley, DPM
Board President



Mr. Nemant Makan
Executive Director