

<p>IN THE MATTER OF DONALD WHEAT, DPM AGREED ORDER LICENSE No. 0778</p>	<p>§ § § § §</p>	<p>BEFORE THE TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS SITTING IN AUSTIN, TRAVIS COUNTY, TEXAS</p>
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AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Donald Wheat, DPM. By letter dated May 19, 2003, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Wheat of its intent to investigate complaints, concerns or reports filed against him. Dr. Wheat was duly notified of the allegations against him. Dr. Wheat 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. Wheat does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Wheat 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. Wheat, 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. Wheat 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. Wheat is licensed as a podiatric physician in the State of Texas (License Number 0778) 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. Wheat, 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. Wheat, 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. Wheat saw the patient on March 21, 2001, for a postoperative evaluation following earlier surgery where a Keller bunionectomy with external fixation was

performed.

5. The patient fell while being positioned for a lateral x-ray.
6. A medical assistant working for Dr. Wheat was positioning the patient when the fall occurred and was unsuccessful in catching the patient.
7. The medical assistant had not taken the requisite course of study to take radiographs.
8. Dr. Wheat was not in the examining room when the radiographs were to be taken.

CONCLUSIONS OF LAW

1. Dr. Wheat 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 8 establish that Dr. Wheat 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 8 establish that Dr. Wheat violated: *22 Texas Administrative Code §375.2(a)*, which provides: “The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical 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.” *22 Texas Administrative Code §382.3(a)* which states: “Any person performing podiatric radiological procedures...under the supervision of a licensed Texas podiatric physician must be registered with the Board.”
8. The Findings Of Fact numbers 1 through 8 establish that Dr. Wheat 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. Wheat shall pay an administrative penalty of \$1,500.00 (One Thousand Five Hundred Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order.
2. Dr. Wheat shall require office staff performing radiological procedures to complete the required training and become registered with the Board.
3. Dr. Wheat will be subject to unannounced office visits by Board staff to verify credentials of office staff performing radiologic procedures.
4. 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.
5. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
6. If Dr. Wheat 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.
7. Failure to comply with all the terms of this order will subject Dr. Wheat 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. Wheat 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. Wheat 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. Donald Wheat, DPM
1101 North 19th Street, Suite 111
Abilene, TX 79601

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, DONALD WHEAT, 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.

Donald Wheat
Donald Wheat, DPM

6-1-05
Date

IN THE STATE OF TEXAS

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COUNTY OF

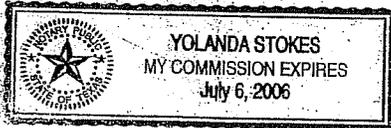
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BEFORE ME, on this day personally appeared Donald Wheat known to me, who first, being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this the 1st day of June, 2005.

Yolanda Stokes
(Printed Name of Notary Public)



Yolanda Stokes
Notary Public, in and for the State of Texas

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

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

Jim Ziskowski
Jim Ziskowski, Ed.D
Executive Director