

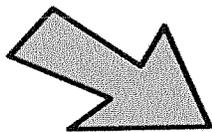


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**PODIATRIC MEDICAL PRACTICE ACT  
OF TEXAS**

**(Texas Occupations Code - Chapter 202 – Board Statute)**

**AND**



**ASSOCIATED RULES & REGULATIONS**

**(Texas Administrative Code – Title 22 / Part 18 – Board Rules)**

**AS AMENDED**

**2011**

# Texas Administrative Code

## TITLE 22 EXAMINING BOARDS

### PART 18 TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

#### Chapters

- CHAPTER 371 EXAMINATION AND LICENSURE
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## CHAPTER 371 EXAMINATION AND LICENSURE

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### §371.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Act* --The Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001, et seq.

(2) *Applicant* --A person who applies to the Texas State Board of Podiatric Medical Examiners for a license to practice podiatric medicine in the State of Texas. A person who applies for re-licensing, or applies for renewal of his or her license, or applies for reinstatement of his or her license after suspension or revocation is not an applicant for purpose of this chapter, and subsequent chapters.

(3) *Board* --The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001, et seq.

(4) *Board Member* --A person lawfully appointed by the governor to serve a term as set by law on the board.

(5) *Candidate/Examinee* --A person who has been admitted to take the examination given by or at the direction of the Texas State Board of Podiatric Medical Examiners as a requirement for licensing to practice podiatric medicine in the State of Texas.

(6) *Executive Director* --An employee of the Board who manages the day-to-day operations of the Board and to whose authority the Board may grant the approval of certain temporary/provisional licenses.

(7) *GPME* --Accredited graduate podiatric medical education. For the purposes of these rules, GPME means residency training program.

(8) *President* --The president of the State Board of Podiatric Medical Examiners.

(9) *Secretary* --The secretary of the State Board of Podiatric Medical Examiners.

*Source Note:* The provisions of this §371.1 adopted to be effective July 5, 2006, 31 TexReg 5286.

### §371.3. Fees.

a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

- (1) Examination--\$250 plus \$39 fee for HB660 (criminal history record information)
- (2) Re-Examination--\$250 plus \$39 fee for HB660 (criminal history record information)
- (3) Temporary License--\$125
- (4) Extended Temporary License--\$50
- (5) Temporary Faculty License--\$40
- (6) Provisional License--\$125
- (7) Initial Licensing Fee--\$459 (i.e. \$454 plus \$5 Office of Patient Protection fee for HB2985 – 78<sup>th</sup> Session)
- (8) Annual Renewal--\$455 (i.e. \$454 plus \$1 Office of Patient Protection fee for HB2985 – 78<sup>th</sup> Session)
- (9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d).
- (10) Non certified podiatric technician registration--\$35
- (11) Non certified podiatric technician renewal--\$35
- (12) Hyperbaric Oxygen Certificate--\$25
- (13) Nitrous Oxide Registration--\$25
- (14) Duplicate License--\$50.
- (15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.
- (16) Statute and Rule Notebook--provided at cost to the agency.
- (17) Duplicate Certificate--\$10.
- (18) HB660 (criminal history record information)--\$39.

*Source Note: The provisions of this §371.3 adopted to be effective July 5, 2006, 31 TexReg 5286; amended to be effective march 4, 2008, 33 TexReg 1808; amended to be effective January 6, 2010, 35 TexReg 98.*

### **§371.5. Applicant for License.**

(a) Any person who wishes to practice podiatric medicine in this state, who is not otherwise licensed under law, must successfully pass an examination given at the Board's direction pursuant to §371.15 of this title (relating to Administration and Scoring of Examination), and complete the graduate podiatric medical education requirements as set forth herein, §371.7(g) of this title (relating to Qualifications for Licensure). One who successfully completes all the requirements for licensing as set forth in these rules and who has made payment of all applicable fees shall be awarded a valid license to practice podiatric medicine in the State of Texas for the term lawfully stipulated by and under the conditions set forth in these Rules, and the Podiatric Medical Practice Act of Texas, Texas Occupations Code, Chapter 202, Subchapter F..

(b) Any person who wishes to sit for examination, shall submit a written application on a form provided by the Board. The applicant shall verify by affidavit the information in the application. The Board may refuse to admit to the examination or grant a license to any applicant who knowingly submits false information to the Board.

(c) Applications for examination must be on the Board's application form printed in ink or typewritten, which shall be furnished by the Board staff upon request.

(d) The completed application and required supporting materials must be received by the Board staff no later than 60 days before the first day of the examination. The materials supporting the application, such as transcripts of candidates, shall be received by the Board before the examination.

(e) The filing of an application and tendering the fee to the Board staff shall not in any way obligate the Board to admit the applicant to examination until applicant has been qualified by the Board as meeting the statutory and regulatory requirements for admission to the examination for licensing.

(f) The full examination fee is \$289. Only certified check, Postal Service Money Order or Express Money Order shall be accepted. No examination fee will be refunded. The examination fee must be received by the Board at least 15 days before the date the application is scheduled to begin the examination.

(g) Temporary License.

(1) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.7(c) of this title (relating to Qualifications for Licensure) who is enrolled in an accredited graduate podiatric medical education (GPME) program under §371.7(g) of this title (relating to Qualifications for Licensure) for a term not to exceed the time the graduate is enrolled in said GPME program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds three years.

(2) A temporary license may be granted by the Board to a certified graduate of an accredited college of podiatric medicine under §371.7(c) of this title (relating to Qualifications for Licensure) or who is enrolled in a GPME program that is pending accreditation, as defined under §371.7(g) of this title (relating to Qualifications for Licensure) for a term not to exceed the time the graduate is enrolled in said DPME program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds four years. It shall be the sole responsibility of the applicant to ascertain the accreditation status, as defined in §371.7(g) of this title (relating to Qualifications for licensure) of the application's GPME program.

(3) A temporary licensee granted a temporary license for the purpose of pursuing a GPME program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which he or she is enrolled.

(4) A temporary license granted by the Board for the purpose of pursuing a GPME program in the State of Texas shall terminate by operation of law and under these rules at the time and on the day that said temporary licensee leaves or is terminated from said GPME program. Any successive entry into a second or further GPME program shall be subject to all laws and rules and application requirements set forth herein.

(5) All temporary licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001 et seq., and subsequent amendments, including §202.153 of said Act, and Chapter 376 of this title (relating to Violations and Penalties), except that temporary licensees are not subject to any Board rules concerning continuing medical education.

(6) Prior to licensure, applicants for a temporary license must have passed both Part I and Part II of the National Board, and shall provide written documentation of passing same directly from the National Board of Podiatric Medical Examiners to the Texas State Board of Podiatric Medical Examiners.

(h) Extended Temporary License.

(1) The Agency's Executive director may grant the holder of a current "Texas Temporary License" an "Extended Temporary License" for good cause. Good cause may include but is not limited to:

(A) The illness of the holder or a family member for whom the holder is directly or indirectly responsible.

(B) A verifiable family emergency.

(C) An additional residency training issue.

(D) Additional time needed for the results of the Texas Jurisprudence Exam to be disseminated and for a valid regular license to be issued by the Board to the holder.

(2) An Extended Temporary License is an extension of the holder's Temporary License and shall allow the holder to continue to practice podiatric medicine for up to an additional three months, with the same responsibilities, restrictions and conditions of a Temporary License as found in subsection (g) of this section.

(3) The fee for an Extended Temporary license shall be \$50 for a three month period.

(4) An Extended Temporary License may be renewed a maximum of two times to any holder of a Temporary License. The second renewal shall be granted only after and upon the agency's Executive Director's determination that appropriate "good cause" circumstances continue to exist for the re-issuance of an Extended Temporary License.

(i) Temporary Faculty License.

(1) The Board may issue a Temporary Faculty License to a qualified podiatric physician who at the time of applying for this license has accepted an appointment to, or is serving as a full-time member of the faculty of an educational institution in this state including a hospital approved podiatric residency program, a residency program pending approval, offering an approved or accredited course of study or training leading to a degree in podiatric medicine.

(2) In this subsection, the term "qualified podiatric physician" shall mean one who:

(A) is a license podiatric physician in good standing in another state having similar licensing requirements as that of this Board, and;

(B) has been in podiatric practice in another state.

(3) This Temporary Faculty License shall be issued to the holder in monthly increments not to exceed 24 months. The incremental periods wherein the license is valid need not be contiguous, but rather may be in any arrangement approved by the Executive Director of the Board.

(4) The Temporary Faculty License shall authorize the visiting podiatric physician to practice podiatric medicine only and exclusively within the teaching confines of the educational institution in this state, hospital or approved residency program or a program pending approval by the council of Podiatric Medical Education of the American Podiatric Medical Association as a part of the duties and responsibilities assigned by the teaching institution to the license holder.

(5) Except for the requirement of passing the Board's Jurisprudence Examination and completing an approved one-year residency program any person applying for a Temporary faculty License under this section must comply with all application, and licensure requirements found in §371.7 of this title (relating to Qualifications for Licensure) and are subject to the Board's Statute and Rules.

(6) The holder must sign an oath on a notarized form provided by the Board swearing that the holder has read and is familiar with the Board's Statute and Rules; will abide by this Statute and Rules and will be subject to the disciplinary procedures of the Board.

(j) Provisional License.

(1) Requirements for Provisional License. On application for examination, an applicant may apply for a provisional license under the following circumstances.

(A) The applicant must be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Podiatric

Medical Practice Act, subsequent amendments, and rules and must furnish proof of such licensure on Board forms provided.

(B) The applicant must have passed a national or other examination recognized by the Board relating to the practice of podiatric medicine and must submit a true and correct copy of the applicant's score report.

(C) The applicant must not have been subject to denial for a license by virtue of:

(i) having violated any provision under Texas Occupations Code Chapter 53 or §202.253;

(ii) Applicant of provisional license meeting the requirements of Board rule §371.21 related to "Re-Examination."

(D) The applicant's license to practice podiatric medicine must not have been revoked or suspended in any jurisdiction.

(2) Sponsorship. An applicant for provisional licensure must be sponsored by a person currently licensed by the Board for at least five years and in good standing under the Podiatric Medical Practice Act with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the Board determines that compliance with this subsection constitutes a hardship to the applicant.

(4) Application and \$125 Fee. The Board shall issue a license pursuant to this rule to the holder of a provisional license if:

(A) The applicant for provisional licensure will be subject to all application requirements required by this chapter and subject to the applicable examination fees established under §371.3(b)(1) of this title (relating to Fees). In addition, the applicant will be subject to a fee for issuance of a provisional license.

(B) No provisional license can be issued until all application forms and fees are received in the Board office and the application is approved.

(C) A provisional license expires upon the passage of 180 days or notice by the Board of the applicant's successful passage or failure of all examinations required by this chapter, whichever comes first. It shall be the responsibility of the applicant and sponsor to return the provisional license to the Board office on expiration.

(D) The applicant's failure to sit for the first scheduled Board examination following application for examination invalidates the provisional license, unless in the discretion of the Executive Director sufficient and reasonable evidence regarding nonappearance exists.

(E) A provisional license may be issued a maximum of three times to the same applicant and as provided in Board rule §371.21 related to "Re-examination."

(F) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Podiatric Medical Practice Act or Board rules, such provisional license will be subject to disciplinary action including revocation.

(5) At the discretion of the Board, the GPME requirement set forth in §371.7(g) of "Qualifications for Licensure" of this title may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state,

and upon application to the Board can show an acceptable record from that state and from all other states under which the applicant has ever been licensed.

(6) At the discretion of the Board, the Board may excuse an applicant for a license from the National Board Part III (i.e. PM Lexis) requirement set forth in §371.7(e), "Qualifications for Licensure"; if the Board determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills (i.e. PM Lexis) when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the Board relating to the safe care and treatment of patients.

(7) A showing of an acceptable record under this section is defined to include, but is not limited to:

(A) a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of a felony or a crime of moral turpitude; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(B) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.

(C) The applicant shall obtain and submit to the Board a letter directly from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

*Source Note: The provisions of this §371.5 adopted to be effective July 5, 2006, 31 TexReg 5286; amended to be effective March 4, 2008, 33 TexReg 1808.*

### **§371.7. Qualifications for Licensure.**

(a) All applicants shall have attained the age of 21 years.

(b) If the applicant has ever been convicted of a felony or a crime of moral turpitude under the state laws of any state or the federal laws of the United States, the approval for licensure shall be at the discretion of the Board.

(c) Each applicant shall have completed the number of college courses required by the Texas Occupations Code, §202.252(b)(3), and graduated from an accredited college of Podiatric Medicine in the United States. The applicant's entire course of instruction must be from such an approved college, and the college must have been so approved during the entire course of the applicant's course of instruction. All educational attainments or credits for evaluation under Texas Occupations Code, §202.252(e), must be completed within the United States. The board may not accept educational credits attained in a foreign country that are not acceptable to The University of Texas for credit toward a bachelor's degree. Foreign undergraduate education credits and/or transcripts will be submitted to the Graduate and International Admissions Center at The University of Texas at Austin for evaluation in addition to the applicant submitting a fee payable to UT-Austin in the amount of \$100.00. The Board will submit all materials and payment to UT-Austin and will rely on the report from UT-Austin to consider an applicants qualifications under this subsection.

(d) All applicants shall have successfully completed a course in cardiopulmonary resuscitation and proved a current certification to that effect.

(e) All applicant's shall have successfully passed all sections of the National Board and provide their scores directly from the National Board of Podiatric Medical Examiners to the Texas State Board of Podiatric Medical Examiners.

(f) If §371.13(e) of this title (relating to Administration and Scoring of Examination) applies, the applicant must meet the overall minimum cut score for the jurisprudence exam. Each applicant shall cause the applicant's test scores from such exam to be send directly from the testing entity to the Board.

(g) Every applicant shall have completed at least one year of GPME with a hospital, clinic or institution acceptable to the Board in a GPME program approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association. Certified documentation of enrollment in said GPME program must accompany the application to the Board for licensing. This subsection, became effective at 12:01 a.m., July 1, 1995.

(h) The board approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Graduate Podiatric Medical Education of the American Podiatric Medical Association. The standards are available from the Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216. the board considers any college of podiatric medicine accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association as a college approved by the Board.

(i) The applicant shall submit evidence sufficient for the Board to determine that the applicant has met all the requirements of this section and any other information reasonably required by the Board. Any application, diploma or certification, or other document required to be submitted to the Board that is not in the English language must be accompanied by a certified translation thereof into English..

(j) At the discretion of the Board, the GPME requirement set forth in subsection (g) of this section may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the Board can show an acceptable record from that state and from all other states under which the applicant has ever been licensed.

(k) At the discretion of the Board, the Board may excuse an applicant for a license from the National Board Part III (i.e. PM Lexis) requirement set forth in subsection (e) of this section if the Board determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills (i.e. PM Lexis) when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the Board relating to the safe care and treatment of patients.

(l) A showing of an acceptable record under this section is defined to include, but is not limited to:

(1) A showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of a felony or a crime of moral turpitude; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.

(3) The applicant shall obtain and submit to the Board a letter directly from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

*Source Note: The provisions of this §371.7 adopted to be effective July 5, 2006, 31 TexReg 5286; amended to be effective March 4, 2008, 33 TexReg 1808.*

### **§371.9. Qualifications of Candidates.**

A candidate, to be eligible to take the examination given by the Board, must not only meet the requirements of §371.7 of this title (relating to Qualifications for Licensure) but must also be prepared to demonstrate to the Board that such candidate is not disqualified from taking the examination for any of the reasons set forth in Texas Occupations Code, §202.253(a)(1)-(18).

*Source Note: The provisions of this §371.9 adopted to be effective July 5, 2006, 31 TexReg 5286.*

### **§371.11. Approved Colleges of Podiatric Medicine in the United States.**

The Board approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association. The standards are available from the Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216. The Board considers any college of podiatric medicine accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association as a college approved by the Board.

*Source Note: The provisions of this §371.11 adopted to be effective July 5, 2006, 31 TexReg 5286.*

### **§371.13. Developing Exams.**

(a) The Board is empowered to establish standards that candidates must meet. Such standards are designed to ensure that licensed podiatric physicians possess the appropriate knowledge and skills in sufficient degree to practice podiatric medicine in the State of Texas. One of these standards is the ability to pass a Board-specified examination. The examination is developed by the Board's Exam Development Committee.

(b) The Exam Development Committee members shall consist of podiatric physicians licensed in the State of Texas and an independent testing professional(s) contracted by the Board to validate the exam.

(c) The Board shall establish the qualifications for membership to the Exam Development Committee.

(d) The Exam Development Committee shall construct examinations from the committee's test specifications which reflects knowledge of the boards laws and rules which govern the practice of podiatric medicine in Texas.

*Source Note: The provisions of this §371.13 adopted to be effective July 5, 2006, 31 TexReg 5286.*

**§371.15. Administration and Scoring of Examinations.**

(a) To be eligible for licensure an applicant must sit for and pass the Texas Podiatric Medical Jurisprudence Examination administered by the board. The board shall administer the Texas Podiatric Medical Jurisprudence Examination at times and places as designated by the board.

(b) All candidates shall be provided a candidates handbook that shall explain detailed information about the examination process prior to exam administration.

(c) Candidates shall not be permitted to bring any help into the examination room, or to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within the hearing of a designated representative of the Board; nor shall the examinee leave the examination room except when permitted by the presiding examiners and accompanied by a member or an employee of the Board.

(d) A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while taking an examination required by the Board.

(e) At the option and at the complete discretion of the Board, the examination may be conducted, in whole or in part, upon a vote of a majority of the Board, by any school, institute, or organization that is deemed by the same majority of the Board to provide adequate and fair examinations of sufficient high standards as to continue to insure high quality practitioners in the State of Texas. The manner of examination, the time of examination and the scheduling of the examination, as well as fee requirements and grading operations may then be delegated by the Board to such an entity, provided, however, that examination results, grades and copies of the examination are made available to the Board and are sent directly from the delegated entity to the Board, and the Board is to maintain a record of the examination results.

(f) The passing score for the examination shall be determined by the Board using accepted criterion-referenced methods.

(g) The Board shall have the examination validated by an independent testing .

*Source Note: The provisions of this §371.15 adopted to be effective July 5, 2006, 31 TexReg 5286.*

**§371.17. Examination Disqualification.**

(a) Applicants who wish to take the examination but who may be disqualified for reasons set out in Texas Occupations Code, §202.253, shall be entitled to a hearing before the Board or a subcommittee of the Board, but such hearing may be informal and need not be held in accordance with Chapter 377 of this title (relating to Procedure Governing Grievances, Hearings, and Appeals).

(b) Hearings on whether an applicant is qualified to take the examination shall be held as soon as possible after the Board receives the application.

(c) If the hearing is held immediately preceding the examination, the Board shall determine whether the applicant is qualified to take the examination before the examination begins. However, if the hearing is not completed by the time the examination is scheduled to begin, the Board may recess such hearing, and any applicant who has not had a hearing shall be allowed to take the examination. The examination grades of all such applicants shall not be disclosed to those applicants until after their eligibility to take the examination is finally determined.

(d) Any applicant who is refused admittance to an examination has the right to appeal such decision in accordance with §376.35 of this title (relating to Judicial Review), Texas Occupations Code, §202.258, and Government Code, §§2001.001 et. seq.

*Source Note: The provisions of this §371.17 adopted to be effective July 5, 2006, 31 TexReg 5286.*

**§371.19. Licensing of Guaranteed Student Loan Defaulters.**

(a) The Board shall refuse to renew the license of a licensee whose name is in the list of those who have defaulted on student loans published by the Texas Guaranteed Student Loan Corporation (hereinafter TGSLC) unless:

(1) the renewal is the first renewal following the Board's receipt of a TGSLC list including the licensee's name among those in default; or

(2) the licensee presents to the Board a certificate issued by the TGSLC certifying that;

(A) the licensee has entered into a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(b) The Board may issue an initial license to a person on TGSLC's list of defaulters who meets all other qualifications for licensure but shall not renew the license unless the licensee presents to the Board a certificate issued by the TGSLC certifying that;

(1) the licensee has entered into a repayment agreement on the defaulted loan; or

(2) the licensee is not in default on a loan guaranteed by the TGSLC.

(c) The Board shall not renew the license of a licensee who defaults on a repayment agreement unless the person presents to the Board a certificate issued by the TGSLC certifying that;

(1) the licensee has entered into another repayment agreement on the defaulted loan; or

(2) the licensee is not in default on a loan guaranteed by the TGSLC or on a repayment agreement.

(d) The Board will provide the licensee identified by the TGSLC as being in default with written notice of his or her default status at least 30 days before the expiration day of the license to the last known address according to the Board's record.

(e) A person informed by the Board of his or her default status according to the TGSLC shall be given a hearing in accordance with Chapter 377 et seq.

*Source Note: The provisions of this §371.19 adopted to be effective July 5, 2006, 31 TexReg 5286.*

**§371.21. Re-Examination.**

(a) All failing candidate will be permitted to be re-examined at a future Board examination date. Repeating candidates must meet the same qualifications as first-time candidates.

(b) The examination for repeating candidates shall be the same as, or equivalent to, the examination for first-time candidates.

(c) Repeating candidates are required to pay the regular examination fee for all subsequent re-examination.

(d) Three unsuccessful attempts by an applicant to pass the examination bars such applicant from all future examinations provided, however, they have the option of appealing it to the Board. The Board has sole discretion to authorize any training they deem necessary or appropriate before retaking the examination.

*Source Note: The provisions of this §371.21 adopted to be effective July 5, 2006, 31 TexReg 5286.*

**§371.23. Review of Examination.**

(a) If requested in writing by a person who fails the licensing examination developed and administered by the Board, the person may review their performance on the examination.

- (b) The following protocol must be observed for candidate review:
- (1) only failing candidates may review examinations;
  - (2) only one review of a given examination is permitted;
  - (3) the review will be done at the convenience of the Board;
  - (4) the review request must be received NOT MORE THAN 30 days after release of the examination results;
  - (5) the review must be scheduled to occur no later than 30 days before the next administration of the examination;
  - (6) the materials to be provided are the candidate's original test sheets used in the examination;
  - (7) any copies or notes made by the candidate during the review will be kept by the Board.

*Source Note: The provisions of this §371.23 adopted to be effective July 5, 2006, 31 TexReg 5286.*

### **§371.25. Residency Program Responsibilities.**

(a) All residency programs requesting temporary licenses for the podiatric physicians participating in the program must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation

(b) The residency director will be held responsible for the entire program including but not limited to:

- (1) ensuring that the temporary licensee is practicing within the scope of the residency program requirements;
- (2) ensuring that the temporary licensee has read and understood the Act and Rules governing the practice of podiatric medicine; and
- (3) ensuring that all residency program attendees are properly licensed with the Board prior to participation in the program pursuant to §371.5(g) of this title (Applicant for License – Temporary License). A temporary license to practice podiatric medicine expires on June 30 of each year.

(c) Within thirty (30) days of the start date of the program each year, the residency director must report to the Board a list of all residents enrolled in the program, the names of all of the directors in the program and which program each individual is enrolled in.

(d) Licensure.

(1) All initial residency applicants shall complete the entire application for Temporary License for enrollment in an accredited graduate podiatric medical education (GPME) program.

(2) On application, an established Texas resident who has been initially enrolled and licensed in an accredited GPME program pursuing a second or third year residency shall renew his unexpired license by:

(A) paying to the Board before the expiration date of the license the required renewal fee;

(B) submitting proof of having successfully completed a course in cardiopulmonary resuscitation and provide a current certification to that effect;

(C) completing the “Memorandum of Understanding for Approved Residence Program” (form P6);

(D) completing the “Certificate of Acceptance for Postgraduate Training Program” (form P10).

(3) An applicant who fails to renew a temporary license prior to expiration will be required to submit an entirely new application for renewal.

(4) Established Texas Residents pursuing a second or third year residency will be issued a new license number upon annual renewal.

(e) The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

(f) Restrictions and Limitations.

(1) As provided under §371.5(g)(3) of this title, a temporary licensee granted a temporary license for the purpose of pursuing a GPME program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which he or she is enrolled,

(2) A temporary license holder shall not be considered to be a fully "Active" licensed podiatrist as provided, in part, under §378.13 of this title who independently practices podiatric medicine without supervision. A temporary license holder is a person in training and is limited by the GPME program in which he or she is enrolled for residency based supervised patient encounters, supervision of which is designed to protect patients and the citizens of Texas.

(3) A person enrolled in a GPME program at all times must hold a Temporary License and shall not be considered to be qualified for an "Active" license until all residency program requirements have been completed and fulfilled as certified by the GPME program residency director, and all other requirements for "Active" licensure have been attained.

(4) A temporary license holder and an applicant for license under §371.7(g) of this title are not qualified by the Board as meeting the statutory and regulatory requirements for "Active" licensure until the GPME program which was actually begun/matriculated is successfully completed.

(5) All temporary license holders are restricted to the supervised practice that is part of and approved by the accredited GPME training program. Residents are not allowed to practice podiatric medicine that is outside of the approved program.

(6) Residents enrolled in an accredited GPME residency (training) program who hold a "Temporary" license (i.e. No. "T##-####") may prescribe controlled substances under the (training) facility's Texas Department of Public Safety (DPS) and U.S. Drug Enforcement Administration (DEA) registration and remain subject to the supervision of the (training) program and residency director. Under no circumstances are residents allowed to prescribe controlled substances for purposes outside of the approved residency (training) program.

*Source Note: The provisions of this §371.25 adopted to be effective July 5, 2006, 31 TexReg 5286; amended to be effective March 4, 2008, 33 TexReg 1808; amended to be effective July 27, 2011, 36 TexReg 4667.*

## CHAPTER 373 ADVERTISING AND PRACTICE IDENTIFICATION

Sec.

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373.7 Corporate Trade Names and Assumed Names

373.9 Professional Corporations or Professional Associations

373.11 Associations with Practitioners of Other Branches of the Healing Art

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373.15 Violations

### §373.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Board* --The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001, et seq.

(2) *Practitioner* --A person validly licensed by the Texas State Board of Podiatric Medical Examiners to practice podiatric medicine in the State of Texas for a term set by law.

(3) *Publication* --Any and all public communications relating to the podiatric physician's practice, including but not limited to, advertisements, announcements, invitations, press releases, journal articles, periodical articles, leaflets, news stories, materials distributed by private or by United States mail, and signs or placards placed in public view or electronic submission (i.e. internet).

*Source Note: The provisions of this §373.1 adopted to be effective July 5, 2006, 31 TexReg 5288.*

### §373.3. Practitioner Identification.

(a) A licensed practitioner of podiatric medicine shall always in any publication that includes his name use only the authorized designation to professionally identify himself or herself. Authorized designations for a podiatric physician are limited to the following: Doctor of Podiatric Medicine, D.P.M., Podiatrist, Podiatric Physician.

(b) A practitioner shall always in any publication that includes the name of his practice use an authorized designation to professionally identify his practice. Authorized designations for a podiatric physicians practice are limited to the following: Foot Surgeon, Podiatric Surgeon, Foot Specialist, Doctor and Surgeon of the Foot, Injuries and Diseases of the Foot, Podiatric Physician.

(c) A practitioner utilizing any other designation must first submit the publication for approval to the Board.

(d) The purpose of this subsection and of so limiting the professional designations of a podiatric physician and his/her practice's business is to insure that the public and all prospective patients are reasonably informed of the distinction between podiatric physicians and other medical practitioners as is reflected by the difference in training and licensing and the scope of practice.

(e) If a practitioner creates a professional corporation or other entity to conduct his practice, he shall, to identify his practice, use an authorized designation followed by one of the suffixes listed in §373.9 of this title (relating to Professional Corporations or Professional Associations). Examples: John Doe, D.P.M., a Prof. Corp.; Dr. John Doe, Podiatrist, Inc.; John Doe, D.P.M., P.A; John Doe, D.P.M., P.L.L.P.

(f) A practitioner shall not use a trade name or assumed name to identify his practice, except as authorized in §373.7 of this title (relating to Corporate Trade Names and Assumed Names).

*Source Note: The provisions of this §373.3 adopted to be effective July 5, 2006, 31 TexReg 5288; amended to be effective September 9, 2007, 32 TexReg 5699.*

#### **§373.5. Notify Board of Practice Name.**

The Board shall be notified immediately of each such designation of name and address at which each practitioner practices and shall be notified of such authorized designations at each license renewal application identifying the name and degree of the practitioner.

*Source Note: The provisions of this §373.5 adopted to be effective July 5, 2006, 31 TexReg 5288.*

#### **§373.7. Corporate Trade Names and Assumed Names.**

(a) A podiatric physician shall submit to the Board a corporate name, trade name or assumed name to identify an individual practice, a group of podiatric physicians with which he/she is practicing for review and approval.

(b) The Board shall approve a trade name or assumed name that:

(1) includes a word or words indicating the practice specialty is podiatric medicine;

(2) fairly and objectively identifies the practice; and

(3) complies with §373.13 of this title (relating to Advertising).

(c) The Board approves names from the standpoint that the name remains within the advertising scope of practice for podiatry. The final registration and utilization of any Board approved name rests upon the civil jurisdiction of the local county Clerk's office or the Texas Secretary of State.

(d) If a name is disapproved, the Board shall notify in writing the party requesting the ruling on the name and set forth the reasons for disapproval.

(e) Within any advertisement or like publication that includes the name of a group, each podiatric physician in the group shall also publish his own name and professionally identify himself in the manner provided in §373.3(a) or (b) of this title (relating to Practitioner Identification), as applicable.

(f) Any person who violates any provisions of this section, or a determination of the Board hereunder, is subject to penalty pursuant to Chapter 376 of this title (relating to Violations and Penalties) of up to \$500 for each day of violation, as provided in Texas Occupations Code §202.352, not to exceed the maximum penalty amount set forth in Chapter 376 of this title herein.

*Source Note: The provisions of this §373.7 adopted to be effective July 5, 2006, 31 TexReg 5288; amended to be effective September 9, 2007, 32 TexReg 5699.*

**§373.9. Professional Corporations or Professional Associations.**

The name of a professional corporation created for the practice of podiatric medicine shall include one of the following suffices:

- (1) (Name), A Professional Corporation
- (2) (Name), A Prof. Corp.
- (3) (Name), P.C.
- (4) (Name), Incorporated.
- (5) (Name), Inc.
- (6) (Name), Professional Association
- (7) (Name), P.A.
- (8) (Name), P.L.L.P.
- (9) (Name), Professional Limited Liability Partnership
- (10) (Name), P.L.L.C.
- (11) (Name), Professional Limited Liability Company
- (12) (Name), L.L.C.
- (13) (Name), Limited Liability Company

*Source Note: The provisions of is §373.9 adopted to be effective July 5, 2006, 31 TexReg 5288.*

**§373.11. Associations with Practitioners of Other Branches of the Healing Art.**

A podiatric physician practicing in a group composed of practitioners from different branches of the healing arts may practice under a corporate name, trade name or assumed name adopted by the group, provided the name is first submitted to and approved by the Board in accordance with the standards specified in §373.7(b)(2) and (3) of this title (relating to Corporate Trade Names and Assumed Names). In addition, within the group, the podiatric physician shall identify himself in the manner provided in §373.3(a) or (b) of this title (relating to Practitioner Identification), as applicable.

*Source Note: The provisions of this §373.11 adopted to be effective July 5, 2006, 31 TexReg 5288.*

**§373.13. Advertising.**

(a) 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, or that are exaggerations or are untrue.

(b) A false, fraudulent, misleading, deceptive, scientifically unsupported or generally unaccepted, or unfair statement or claim includes but is not limited to, a statement or claim that:

- (1) contains a misrepresentation of fact, or claims as fact something that has not been generally accepted among the podiatric community or by the Board as having been proven or established as fact;
- (2) is likely to mislead or deceive or entice or persuade a reasonable person because it fails to make full disclosure of relevant facts whether regarding fees, modes of treatment, conditions or techniques of surgery, post-operative conditions such

as degree of pain, length of time of recovery, mobility and strength during recovery, and the like;

(3) is intended or likely to create in an ordinary reasonable person false or unjustified expectations of favorable results;

(4) states or implies educational or professional attainments or licensing recognition not supported in fact;

(5) states or implies that the podiatric physician has received formal recognition as a specialist, or has any specialized expertise if this is not the case;

(6) contains any laudatory statement, or other statement or implication that the podiatric physician's services are of exceptional quality;

(7) contains statistical data or information that reflects or is intended to reflect quality or degree of success of past performance, or prediction of future success;

(8) represents that podiatric services can or will be completely performed for a stated fee amount when this is not the case, or makes representations with respect to fees that do not disclose all variables affecting the fees, or makes representations that might reasonable cause an ordinary prudent person to misunderstand or be deceived about the fee amount;

(9) contains a testimonial;

(10) represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(11) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required.

(c) Information contained in a public communication by a podiatric physician may include, but is not limited to the following:

(1) name, address, telephone numbers, office hours, and telephone-answering hours;

(2) biographical and educational background;

(3) professional memberships and attainments and certifications, subject, however, to the provisions of subsection (e) of this section;

(4) description of services offered, subject, however to the provisions of subsection (f) of this section;

(5) foreign language ability;

(6) acceptable credit arrangements, subject, however, to the provisions of subsection (b)(2) and (8) of this section;

(7) the limitation of practice to certain areas of podiatric medicine;

(8) the opening or change in location of any office and change in personnel;

(9) fees charged for the initial consultation, provided that if the time for the consultation is to be limited, any such limitation on the time shall be stated;

(10) fixed fees for specific podiatric treatments and services, subject, however, to the provisions of subsection (b)(2) and (8) of this section; and

(11) a statement that a schedule of fees or an estimate of fees to be charged for specific treatments or services will be available on request.

(d) All podiatric physicians shall retain recordings, transcripts, or copies of all public communications by date of publication for a period of at least two years after such communication was made.

(e) 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 determine 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 on Podiatric Medical Education of the American Podiatric Medical Association. Except as provided by subsection (e)(3), podiatric physicians may not list in any type of advertisement or public communication any certifying board that is not approved or recognized by the Council on Podiatric Medical Education or the American Podiatric Medical Association.

(3) Each certifying board that is not recognized by the Council of Podiatric Medical Education or the American Podiatric Medical Association must meet each of the requirements set forth in paragraphs (A)-(E) of this subsection.

(A) the certifying board requires all podiatric physicians who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of podiatric medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(B) the certifying board has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to Section 501(c);

(C) the certifying board has a permanent headquarters and staff;

(D) the certifying board has at least 100 duly licensed certificants from at least one-third of the states; and

(E) the certifying board requires all podiatric physicians who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of podiatric medicine in which the podiatric physician is seeking certification, and the certifying organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the Texas State Board of Podiatric Medical Examiners to be inadequate in scope, content, and duration in that specialty or subspecialty area of podiatric medicine in order to protect the public health and safety.

(f) If a publication by or for a podiatric physician includes mention of a particular surgical technique or device, such as laser surgery, minimal incision surgery, laser bunion surgery or similar particular techniques or devices, the publication must also include a specific and true statement that reveals to an ordinary reasonable person the limits and scope and specific purpose of the technique so as not to mislead an ordinary reasonable person regarding the difficulty, pain or discomfort, length of time for surgery or recuperation, or possibility of complications.

(g) Within the advertisement section of any published or publicly distributed telephone directory, where the profession of podiatric medicine is a plainly visible rubric under which only licensed podiatric physicians appear in print, the rubric itself shall suffice to identify the practice of the licensee as a podiatric physician where the listing is an in-column advertisement; where the advertisement is a block advertisement, even if it falls under such a plain title §371.3 of this title (relating to Practitioner Identification) and §373.7 of this title (relating to Corporate Trade Names and Assumed Names) herein. It shall be the sole responsibility of the licensee to insure that advertisements and listings published in any telephone directory are accurate and conform to the rules set forth by the Board.

*Source Note: The provisions of this §373.13 adopted to be effective July 5, 2006, 31 TexReg 5288; amended to be effective September 9, 2007, 32 TexReg 5699.*

#### **§373.15. Violations.**

(a) Any person who violates this chapter et seq., or a determination of the Board hereunder is subject to a administrative penalty of up to \$500 for each day of violation.

(b) In addition, failure of a podiatric physician licensed by the Board to identify his practice consistent with this chapter is subject to the penalties provided by Chapter 376 of this title (relating to Violations and Penalties).

(c) At the request of the board, the attorney general shall institute and conduct the action in the name of the state.

*Source Note: The provisions of this §373.15 adopted to be effective July 5, 2006, 31 TexReg 5288.*

## CHAPTER 375 CONDUCT AND SCOPE OF PRACTICE

Sec.

- 375.1. Definitions
- 375.3 General
- 375.5 Hyperbaric Oxygen Guidelines
- 375.7 Nitrous Oxide/Oxygen Inhalation Conscious Sedation Guidelines
- 375.9 Consumer Information/Complaint Sign
- 375.11 Offices
- 375.13 Public Participation in Meetings
- 375.15 Relationships with Other Practitioners
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- 375.19 Fees and Informed Consent
- 375.21 Records
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- 375.25 Severability
- 375.27 Report Change of Practice Address and/or Phone Number to the Board
- 375.29 Compliance with Orders, Subpoenas, and Investigations
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- 375.33 Sexual Misconduct

### §375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

- (1) *Board* --The Texas State Board of Podiatric Medical Examiners.
- (2) *Medical Records* --Any records, reports, notes, charts, x-rays, or statements pertaining to the history, diagnosis, evaluation, treatment or prognosis of the patient including copies of medical records of other health care practitioners contained in the records of the podiatric physician to whom a request for release of records has been made.
- (3) *Office* --In the singular, includes the plural.
- (4) *Public communication* --Any written, printed, visual, or oral statement or other communication made or distributed, or intended for distribution, to a member of the general public or the general public at large.
- (5) *Solicitation* --A private communication to a person concerning the performance of a podiatric service for such person.

*Source Note: The provisions of this §375.1 adopted to be effective July 5, 2006, 31 TexReg 5289; amended to be effective October 14, 2010, 35 TexReg 9100.*

### §375.3. General.

(a) 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.

(b) A licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs. A podiatric physician shall not abandon a patient he has undertaken to treat. He may discontinue treatment after reasonable notice has been given to the

patient by the podiatric physician of his intention to discontinue treatment and the patient has had a reasonable time to secure the services of another podiatric physician or all podiatric medical services actually begun have been completed and there is no contract or agreement to provide further treatment.

*Source Note: The provisions of this §375.3 adopted to be effective July 5, 2006, 31 TexReg 5289.*

#### **§375.5. Hyperbaric Oxygen Guidelines.**

A podiatric physician shall be recognized and permitted to supervise and administer hyperbaric oxygen following the published recommendations of the Undersea and Hyperbaric Medical Society, Inc. (UHMS) and within the credentials and bylaws of the hospital that operates the hyperbaric unit with the following stipulations:

(1) A podiatric physician practicing hyperbaric oxygen must do so in a hospital setting.

(2) The podiatric physician must, in addition, show evidence of attendance and successful completion of a hyperbaric medicine team training course that is recognized by the Undersea and Hyperbaric Medical Society. That person may only utilize hyperbaric oxygen in the treatment of the foot and ankle as recognized by the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et seq. A person shall be regarded as practicing podiatric medicine within the meaning of this law and shall be deemed and construed to be a podiatric physician, who shall treat or offer to treat any disease or disorder, physical injury, or deformity, or ailment of the human foot by any system or method.

(3) Prior to administering hyperbaric oxygen, a podiatric physician must have on file with the Texas State Board of Podiatric Medical Examiners documentation certifying compliance with the above requirements.

##### **(4) Annual Renewal**

(A) HBO certificates shall be renewed annually by submitting a registration application, and paying a \$25 fee to the Board by cashier's check or money order. All HBO certificates shall be renewed by January 31 of each calendar year.

(B) If the annual registration fee is not received on or prior to the expiration date of the registration, the following penalty will be imposed:

(i) one to 90 days late--\$5.00 plus the annual registration fee;

(ii) over 90 days late--registration may not be renewed. The person may obtain a new registration by complying with the requirements and procedures for obtaining an original certification.

(C) Registrants shall inform the Board of any address change or change of hospital setting no later than 10 business days after the change is made.

(5) When a certificate is issued, it must be clearly displayed in the office alongside the original license.

(6) A copy of the published recommendations of the Undersea and Hyperbaric Medical Society, Inc., are available from the Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216.

*Source Note: The provisions of this §375.5 adopted to be effective July 5, 2006, 31 TexReg 5289.*

#### **§375.7. Nitrous Oxide/Oxygen Inhalation Conscious Sedation Guidelines.**

(a) Permits.

(1) To employ nitrous oxide/oxygen inhalation conscious sedation for any medical purpose, the podiatric physician must obtain a permit from the Texas State Board of Podiatric Medical Examiners.

(2) Any podiatric physician who is employing nitrous oxide/oxygen inhalation conscious sedation on the effective date of this regulation must apply for the permit in order to continue using nitrous oxide/oxygen inhalation conscious sedation.

(3) The Texas State Board of Podiatric Medical Examiners may at any time at its own discretion and without prior notification require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.

(4) Once a permit for nitrous oxide/oxygen inhalation conscious sedation is issued, the Texas State Board of Podiatric Medical Examiners shall renew the permit by January 31 of each year, unless the Board determines that for good cause an evaluation of the permit is appropriate, and of which the permit holder shall be promptly and fully informed so as to prevent inadvertent use of the technique when the permit status is in question. A permit will not be renewed if a current three-year certificate of inspection of the gas machine is not filed with the Board.

(5) Permits shall be renewed annually by submitting a registration application, and paying a \$25 fee to the Board by cashier's check or money order. All permits shall be renewed by January 31 of each calendar year.

(A) If the annual registration fee is not received on or prior to the expiration date of the registration, the following penalty will be imposed:

(i) one to 90 days late--\$5.00 plus the annual registration fee;

(ii) over 90 days late--registration may not be renewed. The person may obtain a new registration by complying with the requirements and procedures for obtaining an original certification.

(B) Registrants shall inform the Board of any address change no later than 10 business days after the change is made.

(6) When a permit is issued, it must be clearly displayed in the office alongside the original license.

(b) Overview/Direct Supervision

(1) Conscious sedation is the production, be pharmacological or non-pharmacological methods, or a combination thereof, of an altered level of consciousness in a patient.

(2) Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.

(3) Conscious sedation of a patient by nitrous oxide shall be induced, maintained, and continuously supervised only by the podiatric physician or by the assistant under continuous *direct* supervision of the podiatric physician. The nitrous oxide shall not be flowing if the podiatric physician is *not* present in the room.

(c) Office Safety Criteria/Equipment and Medical Supplies

(1) Equipment used must meet the following safety criteria: The gas machine must have

(A) 30% minimum oxygen flow;

(B) Glass flow tubes;

(C) Nitrous oxide fail-safe (will not flow without oxygen);

(D) Automatic room air intake in the event the bag is empty;

(E) Non-rebreathing check valve;

(F) Oxygen flush, and

(G) Auxiliary oxygen outlet with one demand valve resuscitation assembly per office.

(2) All podiatric physicians administering nitrous oxide must have a functioning vacuum system (in case of vomiting or aspiration).

(3) All podiatric physicians administering nitrous oxide must have a scavenger system (to collect nitrous oxide in the office).

(4) All podiatric physicians administering nitrous oxide must have appropriate emergency drugs and equipment for resuscitation.

(5) The office should be equipped with a manifold to provide for protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, and a copy of the service check is to be filed with the office of the Texas State Board of Podiatric Medical Examiners.

(6) There must be a method of locking the nitrous oxide tanks after business hours.

(d) Nitrous Oxide/Oxygen Inhalation Conscious Sedation Permit Requirements.

(1) To induce and maintain nitrous oxide/oxygen inhalation conscious sedation of patients having podiatric surgical procedures in the State of Texas, the following requirements must be met;

(2) Professional Requirements. To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purpose in the State of Texas, the podiatric physician must first provide to the Texas State Board of Podiatric Medical Examiners documentary proof that:

(A) The podiatric physician has completed a didactic and clinical course which includes aspects of monitoring patients and the hands-on use of the gas machine approved by the Texas State Board of Podiatric Medical Examiners approved post-graduate residency training program. The didactic and clinical course must:

(i) be directed by a licensed and certified M.D., D.O., D.D.S., or D.P.M., in the State of Texas with advanced educational and clinical experience with routine administration of nitrous oxide/oxygen inhalation conscious sedation;

(ii) include a minimum of four (4) hours didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation;

(iii) include a minimum of six (6) hours of clinical experience under personal supervision.

(B) The podiatric physician has completed a continuing medical education course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice.

(C) The podiatric physician must have completed a basic and advanced CPR program sponsored by either the American Heart Association or the American Red Cross. Proof of current certification shall be the responsibility of the podiatric physician. Additionally, the D.P.M. shall provide documented training or emergency procedures to his/her personnel.

(e) Auxiliary Personnel. All auxiliary personnel employed in Texas in an office of a podiatric physician and who shall assist in the nitrous oxide/oxygen inhalation conscious sedation procedure shall be trained in basic life support and shall have annual reviews of emergency protocols, contents and use of emergency equipment, and basic cardiopulmonary resuscitation. Documentation verifying these annual reviews shall be maintained in the office of the podiatric physician who employs the auxiliary personnel and shall be submitted upon demand to the Texas State Board of Podiatric Medical Examiners.

(f) Pre-operative Evaluation. The podiatric physician shall evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to insure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.

*Source Note: The provisions of this §375.7 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.9. Consumer Information/Complaint Signs.**

(a) In order for the public to be informed regarding the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board, each licensee is required to display in each podiatric medical office information regarding the Board's name, address, and telephone number.

Figure: 22 TAC §375.9(a) (See appendix)

(b) The licensee must display a sign furnished by the Board or provide to all patients and consumers a brochure that notifies consumers or recipients of services of the name, mailing address, and telephone number of the Board and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the Board.

(c) The sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients. The consumer brochure, if chosen, must be prominently displayed and available to patients and consumers at all times.

*Source Note: The provisions of this §375.9 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.11. Offices.**

(a) It is an objective of the Podiatric Medical Practice Act and a policy of the Board that the public be properly informed concerning the availability and level of podiatric medical services in every community where a podiatric medical office is located. To accomplish this objective, a podiatric physician shall not establish or be affiliated with an office which does not comply with these sections.

(b) All podiatric medical offices shall contain the minimum amount of treatment equipment and facilities so that the podiatric physician may provide his usual and customary podiatric medical services.

(c) The office shall be attended by the podiatric physician on a routine schedule and frequently enough so that treatment is timely and convenient for the patients in the area where the office is located.

(d) All offices shall be staffed or equipped so that patients and the public can conveniently determine when the podiatric physician will be in his office. Examples of how this information might be provided are an answering service or an automatic telephone listening and recording device of some type.

(e) This section does not prohibit a podiatric physician from practicing in communities which are too small to economically justify or otherwise warrant the establishment of an office, but when a podiatric physician undertakes to practice in such communities, he must have sufficient staff and equipment or facilities available to provide safe treatment.

*Source Note: The provisions of this §375.11 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.13. Public Participation in Meetings.**

A scheduled time shall be established on each posted agenda to allow the opportunity for public comment on any issue under the jurisdiction of the Board. The time allowed an individual spokesperson may be limited at the discretion of the chair.

*Source Note: The provisions of this §375.13 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.15. Relationships with Other Practitioners.**

A podiatric physician shall not aid an unethical practitioner or engage in any subterfuge with any person, business, or organization. He shall expose any illegal, unethical, or dishonest conduct of other practitioners and cooperate with those invested with the responsibility of enforcement of the law and these rules of conduct.

*Source Note: The provisions of this §375.15 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.17. Identity of Surgeon.**

A person under a podiatric physician's care or treatment on whom podiatric medical surgery is to be performed in connection with such care or treatment should be informed by the podiatric physician of the identity of the surgeon before the surgery is performed.

*Source Note: The provisions of this §375.17 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.19. Fees and Informed Consent.**

(a) The podiatric physician has special knowledge which his patient does not have; therefore, to avoid misunderstanding he should advise his patient in advance of beginning treatment of the nature and extent of the treatment needed; the approximate time required to perform the recommended treatment and services; and any further or additional services or return by the patient for treatment, adjustments, or consultation and the time in which this shall occur. A podiatric physician should inform his patients as to the fees to be charged for services before the services are performed, regardless of whether the fees are charged on a case basis, on the basis of a separate charge for each service, or a combination of these two methods, or some other basis. If an exact fee for a particular service, as in extended care cases, cannot be quoted to a patient, a fair and reasonable estimate of what the fee will be and the basis on which it will be determined should be given the patient.

(b) A podiatric physician shall not tender or receive a commission for a referral.

*Source Note: The provisions of this §375.19 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.21. Records.**

(a) 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 for at least five years following the completion of treatment.

(b) The records of the identity, diagnosis, evaluation, or treatment of a patient by a podiatric physician that are created or maintained by a podiatric physician are the property of the podiatric physician.

(c) A podiatric physician shall furnish copies of medical records or a summary or narrative of the medical records pursuant to a written request by the patient or by a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs, or an attorney ad litem appointed for the patient or personal representative if the patient is deceased, except if the podiatric physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The podiatric physician may delete confidential information about another patient or family member of the patient who has not consented to the release.

(d) The requested copies of medical records of a summary or narrative of the records shall be furnished by the podiatric physician within 30 days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.

(e) As referenced in subsection (c) of this section, if the podiatric physician denies the request for copies of medical records or a summary or narrative of the records, either in whole or in part, the podiatric physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial, and a copy of the statement denying the request shall be placed in the patient's medical records.

(f) The podiatric physician responding to a request for such information shall be entitled to receive a reasonable fee for providing the requested information. A reasonable fee shall be a charge of no more than \$25 for the first twenty pages and \$.15 per page for every copy thereafter. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery of the records and x-rays.

(g) Copies of original x-rays requested by the patient must be provided to the patient for a fee of \$25 per x-ray plate within a 30 day period.

(h) The podiatric physician providing copies of requested medical records or a summary or a narrative of such medical records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a health care provider licensed in Texas or licensed by any state, territory, or insular possession of the United States or any State or Province of Canada if requested for purposes of emergency or acute medical care. In the event the podiatric physician receives a proper request for copies of medical records or a summary or narrative of the medical records for purposes other than for emergency or acute medical care, the podiatric physician may retain the requested information until payment is received. In the event payment is not routed with such a request, within ten calendar days from receiving a request for the release of such medical records for reasons other than emergency or acute medical care, the podiatric physician shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Medical records requested pursuant to a proper request for release *may not* be withheld from the patient, the patient's authorized agency, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.

(i) A subpoena shall not be required for the release of medical records requested pursuant to a proper release for records under this section made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.

(j) In response to a proper request for release of medical records, a podiatric physician shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.

(k) The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law.

*Source Note: The provisions of this §375.21 adopted to be effective July 5, 2006, 31 TexReg 5289.*

### **§375.23. Reporting Medical Professional Liability Claims.**

(a) Reporting responsibilities. The reporting form must be completed and forwarded to the Texas State Board of Podiatric Medical Examiners for each defendant podiatric physician against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing medical professional liability insurance for a podiatric physician. If an insurance carrier does not adequately report, reporting shall be the responsibility of the podiatric physician.

(b) Separate reports required and identifying information. One separate report shall be filed for each defendant insured podiatric physician. When Part II is filed it shall be accompanied by the completed Part I or other identifying information as described in subsection (d)(1) of this section.

(c) Timeframes and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(d) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(1) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to enable Board staff to match the closure report to the original file. The data required to accomplish this include:

- (A) name and license number of defendant podiatric physician(s); and
- (B) name of plaintiff.

(2) A court order or settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legible written on the order or agreement.

(e) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance. Sanctions under the Insurance Code, Article 1.10, §7, may be imposed for failure to report.

(f) Definition. For the purposes of this chapter a professional liability claim or complaint shall be defined as a cause of action against a podiatric physician for treatment, or other claimed departure from accepted standards of medical or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract to include interns, residents, supervising podiatric physicians, on-call podiatric physicians, consulting podiatric physicians, and those podiatric physicians who administer, read, or interpret laboratory tests, x-rays, and other diagnostic studies.

(g) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(1) Product liability claims (i.e. where a podiatric physician invented a medical device which may have injured a patient but the podiatric physician has had no personal podiatric physician-patient relationship with the specific patient claiming injury by the device);

(2) antitrust allegations;

(3) allegations involving improper peer review activities;

(4) civil rights violations; or

(5) allegations of liability for injuries occurring on a podiatric physician's property, but not involving a breach of duty in the podiatric physician-patient relationship (i.e. slip and fall accidents).

(6) Business disputes (i.e. podiatric employer-employee dispute, partnership breakups, managed care contract disputes).

(h) Claims that are not required to be reported under this chapter may however be voluntarily reported pursuant to the provisions of the Podiatric Medical Practice Act of Texas, Texas Occupations Code §202.353.

(i) The reporting form shall be as follows.

Figure: 22 TAC §375.23(i) (See Appendix)

*Source Note: The provisions of this §375.23 adopted to be effective July 5, 2006, 31 TexReg 5289.*

### **§375.25. Severability.**

If any section or portion of a section is held for any reason to be invalid or inapplicable to any person, such decision shall not affect the validity of any remaining portion or portions of these sections.

*Source Note: The provisions of this §375.25 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.27. Report Change of Practice Address and/or Phone Number to the Board.**

It shall be the responsibility of each licensee to ensure that any change of address or phone number(s) for each licensee's location(s) are reported in writing, via e-mail, facsimile or mail to the board no later than 10 business days after the change is made. Failure to give written notification to the board of these changes within the required 10 business days shall result in an automatic administrative penalty of \$10, for each business day that the information is not reported to the board. The maximum penalty shall not exceed \$300.

*Source Note: The provisions of this §375.27 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.29. Compliance with Orders, Subpoenas, and Investigations.**

(a) A licensee shall comply with all board orders and subpoenas.

(b) A licensee shall cooperate fully and promptly in any board investigation of the licensee. Cooperation shall include but not be limited to the following:

(1) responding to any notice of violation, notice of investigation, or other board correspondence, and

(2) providing documentation requested pursuant to an investigation or notice of violation that the licensee possesses, control, or to which the licensee has access.

(c) Any licensee who does not comply with any provision of this rule shall at the discretion of the Board be subject to a penalty of \$100 per day not to exceed \$5000.

*Source Note: The provisions of this §375.29 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.31. General Authority of Podiatrist to Delegate.**

(a) A podiatrist licensed under Chapter 371 of this title (relating to Examinations and Licensure) may delegate to a qualified and properly trained person acting under the podiatrist's appropriate supervision any medical act that a reasonable and prudent podiatrist would find within the scope of sound medical judgment to delegate if:

(1) the act:

(A) can be properly and safely performed by the person to whom the medical act is delegate;

(B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice podiatric medicine.

(b) The delegating podiatrist remains responsible for the medical acts of the person performing the delegated medical acts.

(c) The Texas State Board of Podiatric Medical Examiners may determine whether:

(1) an act constitutes the practice of podiatric medicine.

(2) a medical act may be properly or safely delegated by podiatrists.

*Source Note: The provisions of this §375.31 adopted to be effective July 5, 2006, 31 TexReg 5289.*

**§375.33. Sexual Misconduct.**

(a) Explanations/Conduct.

(1) Sexual misconduct is behavior that exploits the physician-patient or physician-staff member 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 person as sexual.

(2) There are three levels of sexual misconduct: sexual violation, sexual impropriety and sexual exploitation. Behavior listed in all three levels may be the basis for disciplinary action by the Board if the Board finds that the behavior was injurious or an exploitation of the physician-patient or physician-staff member relationship.

(A) Sexual violation may include physician-patient or physician-staff member sex, whether or not initiated by the patient/staff, and engaging in any conduct with a patient/staff that is sexual or may be reasonably interpreted as sexual, including but not limited to:

- (i) Sexual intercourse, genital-to-genital contact.
- (ii) Oral to genital contact.
- (iii) Oral to anal contact, genital to anal contact.
- (iv) Kissing in a romantic or sexual manner.
- (v) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient/staff has refused or has withdrawn consent.

- (vi) Encouraging the patient/staff to masturbate in the presence of the physician or masturbation by the physician while the patient/staff is present.

- (vii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(B) Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient/staff, including but not limited to:

- (i) Disrobing or draping practices that reflect a lack of respect for the patient's/staff's privacy, deliberately watching a patient/staff dress or undress, instead of providing privacy for disrobing.

- (ii) Subjecting a patient/staff to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient/staff or when consent has been withdrawn.

- (iii) Examination or touching of genitals without the use of gloves.

- (iv) Inappropriate comments about or to the patient/staff, including but not limited to making sexual comments about a person's body or underclothing, making sexualized or sexually demeaning comments to a patient/staff, criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual), making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation.

- (v) Engaging in treatment or examination of a patient/staff for other than bona fide health care purposes or in a manner substantially inconsistent with reasonable health care practices.

- (vi) Using the physician-patient or physician-staff member relationship under the pretext of treatment to solicit a date.

- (vii) Initiation by the physician of conversation regarding the sexual problems, preferences, or fantasies of the physician.

- (viii) Examining the patient/staff intimately without consent.

(C) Sexual exploitation by a physician is the breakdown of the professionalism in the physician/patient/staff relationship constituting sexual abuse. Sexual exploitation may undermine the therapeutic relationship, may exploit the vulnerability of the patient/staff, and

ultimately may be detrimental to the patient's/staff's emotional well-being, including but not limited to:

- (i) Causing emotional dependency of the patient/staff;
- (ii) Causing unnecessary dependence outside the therapeutic relationship;
- (iii) Breach of trust;
- (iv) Imposing coercive power over the patient/staff.

(3) A third impartial person who is the same sex as the patient must be present in the examining room if a patient is asked to disrobe or if the genitalia are examined.

(b) Investigation of Sexual Misconduct.

(1) A board or private investigator may be used in the investigation of sexual misconduct. The evaluator must release to the Board all records pertaining to the identity, diagnosis, prognosis, and treatment of such physician. Such records should include but not be limited to those records maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. Upon completion of the evaluation, results must be released to the Board.

(2) The physician under investigation may be required to have a complete medical evaluation, including appropriate mental and physical examination. Laboratory examination should include appropriate urine and blood drug screens.

(3) The psychiatric history and mental status examination is to be performed by a psychiatrist knowledgeable in the evaluation suspected of sexual misconduct. The examination may include neuropsychological testing.

(c) Disciplinary Options for Sexual Misconduct. Sexual violation or impropriety may warrant disciplinary action by the Board up to and including revocation of license granted by the Board.

(d) License Reinstatement after Sexual Misconduct. In the event a physician applies for license reinstatement, any petition for reinstatement will include the stipulation that additional mental and physical evaluations may be required prior to the Board's review for reinstatement to ensure the continuing protection of the public.

*Source Note: The provisions of this §375.33 adopted to be effective July 5, 2005, 31 TexReg 5289.*

## CHAPTER 376 VIOLATIONS AND PENALTIES.

Sec.

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### §376.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: *Investigator* --Employee, Agent or Person designated by the board to conduct investigations on behalf of the board. The term includes Podiatric Medical Reviewers.

*Source Note: The provisions of this §376.1 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### §376.3. Penalties.

(a) A podiatric physician who violates a board rule, order, or any provision of the Act shall be subject to the following disciplinary action:

- (1) suspension or revocation of the license to practice podiatric medicine; or,
- (2) temporary suspension of a license as determined by a disciplinary panel; or
- (3) a reprimand by the Board which may be either public or private; or,
- (4) a probated suspension and;

(A) valid enrollment in and certified full and complete attendance at any medical educational course or courses, including any residency, or any course in ethics in practice, as deemed appropriate by the Board, or,

(B) valid enrollment in and certified full and complete attendance at any rehabilitation program deemed appropriate by the Board, or,

- (5) administrative penalties, or
- (6) any combination of the penalties listed in this section.

(b) The Board shall revoke a license of a podiatric physician (licensee) if that licensee has been convicted of a felony under Chapter 36, Subchapter D, §36.132 of the Human Resources Code, to wit:

- (1) a state jail felony if the value of any payment or monetary in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of an unlawful act is \$1,500 or more but less than \$20,000;

(2) a felony of the third degree if the value of any payment or monetary benefit provided under the Medicaid program, directly or indirectly, as a result of an unlawful act is \$20,000 or more, but less than \$100,000;

(3) a felony of the second degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program directly or indirectly, as a result of the unlawful act if \$100,000 or more but less than \$200,000;

(4) a felony of the first degree if the value of the payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$200,000 or more.

*Source Note: The provisions of this §376.3 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.5. Administrative Penalties.**

(a) The Board may impose an administrative penalty against any licensee who violates any provision of the Act or rule or order of the Board. The Executive Director or his/her designee may assess a penalty for each violation and present a report to the Board concerning the facts on which the determination was based and the amount of the penalty. The range of penalty is \$500 to \$5,000 per violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violation;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board shall utilize a penalty schedule to determine the amount of the violation based on the factors listed in subsection (b) of this section.

Figure: 22 TAC §376.5(c) (See Appendix)

(d) The provisions of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws. The provisions of this section shall be carried out in accordance with the requirements of the Act.

(e) If the licensee does not agree with the imposition of the administrative penalty, the licensee may request a hearing before the State Office of Administrative Hearings as stated in §376.27 of this title (relating to Investigations of Complaints Filed with the Board).

(f) If the licensee requests a hearing or fails to respond within 20 days after receiving notice of the proposed penalty, the Executive Director shall set a hearing and give notice to the licensee of the hearing.

(g) If the final order of the Board imposes an administrative penalty against a licensee, the licensee may pay the amount of the penalty, pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, or the licensee may, without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both pursuant to Texas Occupations Code, Chapter 202, Subchapter L, §§202.551-202.561.

(h) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided in the Texas Government Code Annotated §2001.171 et seq. and subsequent amendments; and

(2) is under the substantial evidence rule.

(i) All such penalties shall be made a permanent part of the licensee's record at the Board office that is to be maintained according to the laws of the State of Texas and these rules.

*Source Note: The provisions of this §376.5 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.7. Probation of Penalty.**

A board order to revoke, cancel or suspend a license may be probated in whole or in part at the discretion of the Board.

*Source Note: The provisions of this §376.7 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.9. Institution of Action by the Board.**

(a) The Board may rescind, in part or in whole, the probation of any order upon a showing of any violation of statutes or rules governing the practice of Podiatric Medicine, or of any state or federal laws.

(b) The hearing to rescind probation shall be before the Board. The respondent or counsel for the respondent, and any person complaining of the respondent, or that person's counsel shall be given at least ten days notice of the hearing.

(c) Neither pre-hearing discovery nor informal conference will be permitted prior to the hearing, unless as agreed to by all parties.

(d) Respondent and any person complaining of respondent may request that the Board issue subpoenas for the appearance of witnesses and production of documents at the hearing. The Board may issue subpoenas on its own motion.

*Source Note: The provisions of this §376.9 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.11. Board Discretion Regarding Penalties.**

The Board shall have complete discretion to impose penalties as are reasonable and fair and in accordance with due process in light of all the evidence adduced in each case, the difficulty or proof of elements of the case, the credibility of evidence or witnesses for the State or the licensee, the harm caused by the violation, and other similar considerations, including a comparison with the penalties previously assessed in similar cases and circumstances.

*Source Note: The provisions of this §376.11 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.13. Agreed Orders.**

The Board may enter into negotiated Agreed Orders with negotiated penalties when, in the Board's discretion, full hearing of the case is impractical, unnecessary, or not in the best interest of the State due to such factors as difficulties in pursuing discovery, risk of obtaining adequate evidence or proof, or the length of time accrued since the alleged violation and the possibility of stale evidence, and other similar considerations.

*Source Note: The provisions of this §376.13 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.15. Cease and Desist Orders.**

(a) The board may serve a cease and desist order on a person the board believes is engaging or is likely to engage in an activity that is violation of this Act or another state statute

or rule relating to the practice of podiatry, The order must:

- (1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
- (2) state the acts or practices alleged to be an unauthorized activity; and
- (3) state the effective date of the order , which may not be before the 21st day after the date the order is received.

(b) The person may request a hearing before the 22nd day after the date of receiving the order.

(c) The board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) The board may impose an administrative penalty against a person who violates an order issued under this section.

(e) The board may refer the violation to the Attorney General for further action.

*Source Note: The provisions of this §376.15 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.17. Refund Orders.**

(a) The board may order a licensee to pay a refund to a patient as part of an agreement resulting from an informal settlement conference.

(b) The refund may be used instead of or in addition to an administrative penalty imposed by the board.

(c) The amount of the refund agreed to in the agreed order may not exceed the charges for the services rendered by the licensee.

(d) The refund order is limited to the amount that the patient paid for services rendered by the licensee and cannot require payment for other damages or estimate of harm.

*Source Note: The provisions of this §376.17 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.19. Conditions of Suspension of License.**

(a) Suspension of a license means that the office of the licensee is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and the licensee may not participate for income in any professional activity that is directly related to diagnosis or treatment of a patient or activities that involve consultation services related to management of a practice. The licensee may refer patients to another practitioner for treatment or consultation during the period of the suspension, but the licensee shall not derive any income from such referrals. The licensee may allow another practitioner to see the licensee's patients during the period of the suspension the licensee's office or other practitioner's office, but the licensee shall derive no income from the other practitioner by way of referral fees, or the like.

(b) The licensee's office may remain open for the purposes of administrative work, including making future appointments, arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters not directly related to the diagnosis and treatment of patients.

(c) If the suspended licensee shares offices with another practitioner, the other practitioner shall be allowed to continue to practice, but the suspended licensee shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients. The board may, through unannounced visits or by requesting documentation, check on the business arrangement that the suspended practitioner has with the other practitioner(s) regarding the renting of equipment, rental of business facilities, referral fees or any other negotiated arrangement so as to be sure that the suspended practitioner is not deriving any monies from the practice of podiatric medicine.

(d) If a license suspension is probated, the Board may require the licensee to:

- (1) report regularly to the Board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the Board; or
- (3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation.

*Source Note: The provisions of this §376.19 adopted to be effective July 5, 2006, 31 TexReg 5292.*

#### **§376.21. Temporary Suspension of a License.**

(a) The president of the board shall appoint a disciplinary panel consisting of three board members to determine whether a person's license to practice podiatry should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice podiatry would, by the person's continued practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that individual.

(c) A license may be suspended by the disciplinary panel without notice or hearing if:

(1) the board immediately provides notice of the suspension to the license holder;

and

(2) a hearing on the temporary suspension before the disciplinary panel of the board is scheduled for the earliest date after the 10th day after the notice of hearing.

(d) The disciplinary panel may hold a meeting via a telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing, if the disciplinary panel affirms the temporary suspension of the license holder's license, the board shall schedule an informal compliance meeting as soon as practicable, unless the license holder waives the informal meeting or the informal meeting has already been held regarding the basis for the temporary suspension.

(f) If the license holder is unable to show compliance at the informal meeting, a board representative shall initiate a disciplinary procedure under §202.501 of the Act.

(g) If after the hearing the disciplinary panel does not temporarily suspend the license holder's license, the facts that were the basis for the temporary suspension may not be the sole basis of another proceeding to temporarily suspend the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for a temporary suspension of the license holder's license. Facts that are the basis for the temporary suspension of a license holder's license includes facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

*Source Note: The provisions of this §376.21 adopted to be effective July 5 2006, 31 TexReg 5292.*

#### **§376.23. Educational Courses.**

The Board deems as approved any Continuing Medical Education Course approved by the American Podiatric Medical Association. The Board may also approve, by majority vote, substitution of a non-APMA-approved course when such is indicated by the record before the Board.

*Source Note: The provisions of this §376.23 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.25. Complaint Form.**

The Board shall adopt the following form as its official complaint form. The form, along with a "Consumer Information" pamphlet explaining the Board's functions and complaint process, will be furnished to any person who wishes to file a complaint with the Board. The official complaint form is suggested for uniformity, however, any written or electronic communication that clearly advises the Board of the information required shall be deemed sufficient.

Figure: 22 TAC §376.25 (See Appendix)

*Source Note: The provisions of this §376.25 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.27. Investigations of Complaints Files with the Board.**

#### **(a) Receipt of Complaint.**

(1) All written and signed complaints filed with the Board are subject to investigation. Complaints may also be filed electronically via e-mail and the Board's website with use of the official complaint form. Anonymous written complaints may be investigated and will be logged and filed for information purposes. Complainants who wish to complain by telephone will be advised that their complaints must be submitted in writing, must be signed by complainant, and that Board complaint forms will be mailed to them for their use and submission to the Board. A log will be maintained with names and addresses of complainants who telephone the Board offices and to whom complaint forms are mailed. The Board shall also maintain an information file for each complaint that contains a record of all persons contacted in relation to the complaints, summary of findings at each stage of complaint process, an explanation of legal basis and reason that a complaint was dismissed, and other relevant information. If necessary, agency staff may request a complainant to swear by affidavit to the allegations made before a Notary Public to attest to the truthfulness of the complaint. Failure to submit a sworn/notarized statement or affidavit, or the filing of an untruthful/false complaint can result in the complaint being dismissed.

(2) When a written complaint is received at the Board Offices, the complaint will be date-stamped immediately. The complaint will then be reviewed by the Executive Director or Investigator. A complaint file will be created and the complaint will be assigned to an Investigative Liaison, who is a Board member and a licensed podiatric physician, or a Podiatric Medical Reviewer as determined by agency staff to seek clinical expertise and medical judgment as necessary. Jurisdictional complaints investigated by the Board include, but are not limited to, allegations involving death, substance abuse, fraud, negligence, advertising, fees, records, inappropriate physician behavior, impaired physician and office inspections. Complaints received based on information and facts that have previously been or are currently being investigated may not warrant additional investigation. If a complaint is determined to be non jurisdictional, the complaint may be referred at the complete discretion of the Board to another entity or government agency for investigation.

(3) If an allegation is determined to be critical in nature, it will be assigned a high priority and the requirement for written and signed complaints will be waived temporarily, but will be obtained later in the investigative process. Upon receipt of information posing a threat to public safety and welfare, in response to trends/patterns in violations or in order to meet regulatory mandates, the Board may initiate complaints of its own. In order to track trends/patterns, information may be entered into the Board's complaint database to establish a regulatory index.

(4) Some complaints which are of a low priority or involve miscommunication may have the possibility to be resolved via a peer review process with the state podiatric society

or trade association. These scenarios may involve, but are not limited to, situations where there is a lack of information or misunderstanding as to the care delivered, feelings that a patient's time with the podiatrist was brief/hurried/abrupt, an appearance that the podiatrist was uncaring, professional disputes/conflicts (i.e. peer-to-peer), fee disputes, third party payer disputes, common orthotic issues, bedside manner issues, medical record accessibility issues, advertising issues and some surgery complaints where all a patient is seeking is continuity of care and corrective remedies. The Board shall have complete discretion to refer such complaints for peer review to a state podiatric society or trade association for professional resolution in accordance with the provisions of Texas Occupations Code Chapter 202, Subchapter J "Peer Review." A written report of a society's or trade association's professional review in response to a Board referral must contain a summary of the findings, recommendations, conclusions and resolution with submission of the same made to the Board. In the event of a professional resolution amongst the society/trade association, complainant and podiatrist, the society/trade association shall notify the complainant and podiatrist of the same by letter explaining the action taken with a copy of the letter submitted to the Board.

(b) Investigation of Allegations.

(1) Upon receipt of the written allegation and/or determination of a high priority issue, the Executive Director or Investigator will assure that the complaint information is entered into the computer and given a file number. A letter of acknowledgment will be promptly mailed to the complainant. Case files will be reviewed from time to time as needed to insure cases comply with scheduling.

(2) Depending on the type of allegations and/or violations at issue, the investigation of the complaint will usually be conducted in accordance with the following guidelines:

(A) After a signed and written complaint is received, the Executive Director or Investigator may interview the complainant either in person or over the telephone so that the complainant has an opportunity to explain or elaborate upon the allegations made in the complaint. If the allegation is a misunderstanding and/or without merit, the Executive Director or Investigator informs the Investigative Liaison, as necessary, a recommendation that the case be closed upon submission of a written report to and with concurrence of the Investigative Liaison informs the complainant that the case be closed.

(B) After the complainant's statement has been obtained, and the Executive Director or Investigator determines that a potential violation exists, the licensee is informed of the nature of the allegations in the complaint. Patient records may be requested to assist in the investigation. The licensee is given an opportunity to respond to the allegations either in an interview with the Executive Director or Investigator or by giving a narrative statement via mail or FAX or electronic means. The licensee may be provided a copy of the complaint unless providing a copy of the complaint would jeopardize the investigation or is prohibited under another provision of law. If a copy of the complaint is provided to the licensee, he/she may disclose the information to another person only to the extent consistent with the authorized purpose for which the release of information was provided. Otherwise, a complaint, report, investigation file, or other investigative information in the possession of or received or gathered by the Board or an employee or agent of the Board that relates to a license holder, a license application, or a criminal investigation or proceeding is privileged, confidential, and not subject to discovery, subpoena, or any other legal method of compelling release.

(C) At any time before a complaint is resolved, further investigation may be necessary in the form of second or third opinions, obtaining supporting documents, interviewing other witnesses, etc., depending on the case at hand. During the course of the investigation, the board will periodically notify the complainant of the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation.

(D) If the case does not require the medical judgment of the Investigative Liaison, and the Executive Director or Investigator concludes, after all elements have been investigated, that a violation probably exists the Executive Director or Investigator shall compose and mail to the licensee an Agreed Order inviting the licensee to an informal hearing on the Agreed Order to discuss the allegations made against the licensee. If the Executive Director or Investigator concludes that the complaint has no merit, the Executive Director or Investigator will apprise the Investigative Liaison assigned to the case, as necessary, and authorize closing the case. The Executive Director or Investigator will assure the complainant and licensee are notified by letter explaining the action taken on the dismissed complaint. The Board may also inform the subject licensee of any recommendations that may improve the licensee's practice. If the complaint is determined to be untruthful, false, baseless, unfounded, frivolous or malicious, the complaint shall be dismissed and a letter shall be sent to the address of record of the complainant and licensee informing him/her that the complaint was dismissed.

(E) If the case does require the medical judgment of the Investigative Liaison, and the Executive Director or Investigator concludes, after all relevant elements have been investigated, that a violation probably exists, the Executive Director or Investigator shall send copies of pertinent documents, along with a cover letter to the Investigative Liaison, who will assist in determining whether the case should be closed, further investigation is warranted, or the licensee should be invited to respond to the allegations at a conference. If the case is closed, the complainant and the licensee will be notified by letter explaining the action taken on the dismissed complaint.

(F) If an informal hearing on the Agreed Order is recommended, the Executive Director or Investigator shall, by certified mail, mail to the licensee an Agreed Order with a list of allegations. The conference is conducted in accordance with the Texas Government Code Annotated §2001.054 et. seq., and is part of the investigatory process. The licensee is advised that he or she has the right to counsel. The allegations are presented to the licensee and the licensee is given every opportunity to present his or her side of the issue. The licensee shall also have the right to waive the conference, in which case the investigation shall proceed to the next step in the disciplinary process. In attendance at the conference are the Executive Director or Investigator, the Investigative Liaison assigned to the case, the Assistant Attorney General representing the Board, a public member of the board, and the complainant if the complainant desires to attend.

(G) After the licensee responds to the allegations, the Executive Director or Investigator, Investigative Liaison, and the Assistant Attorney General will review the file and the licensee's response and recommend the disposition of the complaint. If it is determined that a violation has not occurred, the case will be dismissed and all parties to the allegations will be notified by letter explaining the action taken on the dismissed complaint. The Executive Director or Investigator will advise the Board at each scheduled board meeting of the number of complaints dismissed since the last board meeting. The information furnished will consist of a status report of the total number of cases opened and closed for the time period in between each board meeting or quarterly performance measure report.

(H) If it is determined that a violation has occurred and a penalty/disciplinary action is warranted, within 14 days of the date of determination a proposed agreed order shall be mailed by certified mail to the licensee. The order must include a brief summary of the alleged violation and a statement that the licensee waives the right to a hearing on the occurrence of the violation and the amount of the penalty/disciplinary action. In determining the penalty/disciplinary action, the board will utilize the complaint penalty schedule to assess the appropriate sanction based on the category of complaint and severity level.

(I) Within 20 days after the date the licensee receives the proposed order, the licensee may, in writing, accept the determination and recommended penalty, disciplinary

action of the Executive Director or Investigator, propose a counter-offer, or may request, in writing, a hearing on the occurrence of the violation and the amount of the penalty.

(J) If the licensee accepts the determination and recommended penalty/disciplinary action of the Executive Director or Investigator, the Board by order shall approve the proposed agreed order or shall amend the proposed agreed order as a counter-offer.

(c) Docketed Complaint and Hearing.

(1) If the licensee declines the proposed agreed order and requests a hearing or if the licensee fails to respond timely to the proposed agreed order, a docketed complaint will be drafted and assigned a docket number. The complaint is reviewed by the Assistant Attorney General who then returns it to the agency where corrections are made, if indicated. The date the Executive Director or Investigator files the complaint with SOAH is the official date of filing the docketed complaint with the Board. The docketed complaint is then served on the licensee by certified mail or personal service at least ten days prior to a scheduled hearing.

(2) The Executive Director or Investigator shall request a hearing and give notice of the hearing to the licensee. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact, conclusions of law and promptly issue to the Board a proposal for a decision about the occurrence of the violation, the proposed disciplinary action, and the amount of the proposed penalty, if any. Based on findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred, impose a penalty, impose disciplinary action, or may find that no violation occurred. The complainant shall be promptly advised by letter of the final disposition of the complaint.

(3) The notice of the Board's order given to the licensee under the Texas Government Code Annotated Chapter 2001 et. seq. and its subsequent amendments must include a statement of the right of the licensee to judicial review of the order.

(d) Licensee's Record. All actions taken by the Board against a licensee shall be made a permanent part of the licensee's record at the Board office reportable on the Board's website and reportable to the NPDB-HIPDB (National Practitioner Databank - Healthcare Integrity Protection Databank).

(e) Use of Private Investigators. Private investigators may be utilized in any case filed with the Board. Private investigators will be employed only when it is economically advantageous to the Board or when it is not practical for agency staff to travel to a distant destination or to another state. Private investigators will be utilized in accordance with existing state purchasing rules of the General Services Commission and will be utilized with the approval of the Executive Director and Investigative Liaison.

(f) Criminal Investigations.

(1) The Board shall cooperate with and assist any law enforcement, criminal justice or government agency in the investigation of criminal allegations or information obtained by the board in the course of an investigation that indicates that a crime may have been committed. Criminal information in the possession of the Board is confidential and may be disclosed only as necessary to conduct the investigation.

(2) The Board shall conduct criminal background checks of applicants for licensure and as necessary, for licensees under investigation, through the Texas Department of Public Safety and the Federal Bureau of Investigation as authorized by law. In pursuing an investigation for licensure, the Board may also contact any other law enforcement agencies to obtain information as necessary to fulfill legislative mandates.

(3) Criminal background checks include, but are not limited to, fingerprint checks, conviction histories, arrest histories, name histories, personal identifier histories, review of court/judicial documents and histories of involvement with law enforcement or any other criminal justice agencies.

*Source Note: The provisions of this §376.27 adopted to be effective July 5, 2006, 31 TexReg 5292; amended to be effective January 19, 2011, 36 TexReg 141.*

**§376.29. Monitoring Licensee Compliance.**

(a) The board may conduct unannounced office inspections of a podiatric practice pursuant to a written complaint, in order to properly investigate the allegations being made by the complainant, or to allow for the proper investigation of new information developed during the investigation of the original complaint. Common allegations justifying the need for an office inspection may include, but are not limited to any violation(s) of the Board's Rules or Statute, such as improper medical record keeping, safety and hygiene issues, sexual misconduct, illegal use or dispensing of prescription drugs, failure to account for drugs dispensed or administered, drug diversion or abuse and insurance fraud including Medicaid/Medicare billing.

(b) The board may enter the business premises of a person regulated by the board without notice during reasonable business hours to:

- (1) investigate a complaint filed with the board; or
- (2) determine compliance with an order of the board.

*Source Note: The provisions of this §376.29 adopted to be effective July 5, 2006, 31 TexReg 5292.*

**§376.31. Consequences of Background and Criminal History Checks.**

(a) This section sets out the factors and criteria on the eligibility of persons with criminal convictions, deferred adjudications, state or federal guilty pleas on indictments and/or informations, and background information to obtain a license to practice podiatry or those already licensed who renew. The board may refuse to issue or renew a license to any individual that has been convicted of a felony, received a deferred sentence, or engaged in conduct unacceptable to the board.

(b) The practice of podiatry involves dealing with patients, their families and friends, and the public in a variety of clinical and private practice settings. The podiatrist deals with individuals who are physically, emotionally and financially vulnerable. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the board as relevant to an individual's fitness to practice podiatry.

(c) In considering whether a criminal conviction or other background information renders the individual ineligible for licensure or renewal of licensure as a podiatrist, the board shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purpose of engaging in the practice of podiatry;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime to the ability, capacity, or fitness required to engage in the practice of podiatric medicine; and
- (5) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude.

(d) In addition to the factors that may be considered under subsection (c) of this section, the board, in determining the present fitness of a person who has been convicted of a crime, shall consider:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the individual.

(e) It is the responsibility of the individual to obtain and provide to the board the recommendations listed under subsection (d)(6) of this section. The individual shall also furnish proof as may be required by the board that he or she has maintained a record of steady employment, maintained a record of good conduct, and has paid all outstanding costs and restitution as may have been ordered in any criminal cases following conviction.

(f) If requested, it is the responsibility of the individual to ensure that the board is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed podiatrist. Failure to provide such documentation will result in delays processing the license or renewal certificate, and possible grounds for ineligibility.

(g) Board guidelines utilized for determining the reasons why a particular crime is related to the practice of podiatry and other factors that affect the decision as to whether the past criminal history would render the individual ineligible for licensure shall be published on the "Complaints" page of the Board's website.

(h) Criminal history match report hits through the Texas Department of Public Safety and Federal Bureau of Investigation shall be entered into the Board's complaint database to track criminal backgrounds and to also establish a baseline for future comparisons. Hits will be entered for tracking purposes for criminal activity but no notices will be submitted to the licensee if no further investigation is warranted. For those hits requiring further investigation, the Board will obtain the corresponding arrest/offense/police reports from the jurisdictional law enforcement agency for determination of scope of violation. For alleged jurisdictional violations, notices will be mailed to the licensee and sworn statements obtained.

*Source Note: The provisions of this §376.31 adopted to be effective July 5, 2006, 31 TexReg 5292; amended to be effective March 4, 2008, 33 TexReg 1809.*

### **§376.33. Notice and Review.**

If the board suspends or revokes a license or denies an applicant a license or the opportunity to be examined for a license due to the individual's prior conviction of a crime and the relationship of the crime to the license, the board shall notify the individual in writing of:

(1) the reason for the suspension, revocation, denial or disqualification;

(2) the review procedure provide in §376.27 of this title (relating to Investigations of Complaints Filed with the Board); and

(3) the earliest date the individual may appeal the ruling of the board.

*Source Note: The provisions of this §376.33 adopted to be effective July 5, 2006, 31 TexReg 5292.*

### **§376.35. Judicial Review.**

(a) An individual whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Chapter 371 et seq (relating to Examinations and Licensure) and who has exhausted administrative appeals may file an action in the district court in the Travis county for review of the evidence presented to the board and the decision made by the board.

(b) The petition for an action under subsection (a) of this section must be filed no later than the 30th day of the date the board's decision is final and appealable.

*Source Note: The provisions of this §376.35 adopted to be effective July 5, 2006, 31 TexReg 5292.*

## CHAPTER 377 PROCEDURES GOVERNING GREIVANCES, HEARINGS, AND APPEALS

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### §377.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Administrative Law Judge (ALJ)* --Person designated by the State Office of Administrative Hearings to preside over a contested case.

(2) *Applicant* --A party seeking a license or rule from the Board, or appealing any action of the Board.

(3) *Board* --The Texas State Board of Podiatric Medical Examiners.

(4) *Board member* --One of the appointed members of the decision-making body defined as the Board.

(5) *Complainant* --Any party who has filed a sworn written complaint with the Board against any party subject to the jurisdiction of the Board.

(6) *Contested case* --A proceeding, including but not restricted to licensing, in which the legal rights, duties or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(7) *Intervenor* --Any party to a grievance, hearing, or appeal otherwise not defined.

(8) *License* --Includes the whole or part of any Board approval, registration, or similar form of permission required by law.

(9) *Licensing* --Includes the Board process respecting the granting, denial, renewal, revocation, cancellation, suspension, annulment, withdrawal, limitation, or amendment of a license.

(10) *Party* --Each person or agency named or admitted as a party to a complaint, grievance, hearing, or appeal.

(11) *Person* --Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a State of Texas governmental agency.

(12) *Petitioner* --A party seeking a rule from the Board appealing any action of the Board, or a contested case before SOAH.

(13) *Pleading* --Written allegations filed by parties concerning their respective claims.

(14) *Protestant* --Any party opposing an application or petition filed with the Board.

(15) *Respondent* --Any party against whom any complaint has been filed or a party who responds to a Petitioner's original petition or pleading.

*Source Note: The provisions of this §377.1 adopted to be effective July 5, 2006, 31 TexReg 5294.*

### **§377.3. Scope of Rules.**

These rules shall govern the procedure for the institution, conduct, and determination of all cases and proceedings before SOAH or the Board. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Board or the substantive rights of any person. To the extent that a rule contained in this chapter conflicts with or does not address a matter covered by a SOAH rule, the SOAH rule shall govern all matters and proceedings before SOAH.

*Source Note: The provisions of this §377.3 adopted to be effective July 5, 2006, 31 TexReg 5294.*

### **§377.5. Filing of Documents.**

(a) All applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the Board, except for SOAH-related proceedings, shall be filed with the Executive Director or other designated person. They shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or Board rules.

(b) A copy of all documents filed with the State Office of Administrative Hearings shall be sent to the Board's legal representative, or if a legal representative has not been identified, then to the Board office, addressed to the Executive Director.

(c) Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the Executive Director or the Administrative Law Judge, as appropriate, upon written motion duly filed prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need, therefore, is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be service by the party filing same upon all other parties of record to the proceeding, contemporaneously with the filing thereof.

*Source Note: The provisions of this §377.5 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.7. Agreements to be in Writing.**

No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the Board or SOAH shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law.

*Source Note: The provisions of this §377.7 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.9. Service in Nonrulemaking Proceedings.**

(a) *Personal Service.* Where personal service of notice by the Board is required, the Board shall mail the same, by certified return receipt requested mail, to the last known place of address or the last address supplied to the Board of the person entitled to receive such notice.

(b) *Service of Pleadings.* A copy of any protest, reply, answer, motion, or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under these rules to make appearances, service shall be made upon such representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the Board or an Administrative Law Judge striking the protest, reply, answer, motion, or other pleading from the record.

(c) *Certificate of Service.* A certificate by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be *prima facie* evidence of such service. The following form of certificate will be sufficient in this connection: I hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service, name, address, phone number and fax number of every party being served). Signature.

*Source Note: The provisions of this §377.9 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.11. Conduct and Decorum.**

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board, the Administrative Law Judge, the Board member(s), and each other party, witness, attorney, and representative. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

*Source Note: The provisions of this §377.11 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.13. Classification of Parties.**

Parties to proceedings before the Board are applicants, protestants, petitioners, complainants, respondents, and intervenors. Regardless of errors as the designations in their pleadings, the parties shall be accorded their true status in the proceeding.

*Source Note: The provisions of this §377.13 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.15. Parties in Interest.**

Any party in interest may appear in any proceeding before the Board. All appearances shall be subject to a motion to strike upon showing that the party has no justifiable or administratively cognizable interest in the proceeding.

*Source Note: The provisions of this §377.15 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.17. Appearance Personally or by Representative.**

Any party may appear and be represented by an attorney at law authorized to practice law in Texas. Any person may appear on his own behalf. A corporation, partnership, or association may appear and be represented by one of the following: any officer, partner, or full-time employee.

*Source Note: The provisions of this §377.17 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.19. Classification of Pleadings.**

Pleadings filed with the Board shall be complaints, applications, petitions, answers, replies, motions for rehearing, appeals, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

*Source Note: The provisions of this §377.19 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.21. Form and Content of Pleadings.**

(a) *Typewritten or Printed.* Pleadings shall be typewritten or printed upon paper 8 1/2 by 11 inches with a left-hand margin at least 1 inch wide and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible and are certified as true and correct copies.

(b) *Content.* Pleadings shall state their object, shall contain a concise statement of facts in support of the same, and shall be signed by the applicant or his authorized agent.

(c) *Signature and Address.* The original of every pleading shall be signed in ink by the party filing the paper or by his authorized representative. Pleadings shall contain the address of the party filing the document or the name, telephone number, and business address of the representative.

(d) *Pleadings.* All pleadings for which no official form is prescribed shall contain:

- (1) the name of the party seeking to bring about or prevent action by the Board;
- (2) the names of all other known parties in interest;
- (3) a concise statement of the facts relied upon by the pleader;
- (4) a prayer stating the type of relief, action, or order desired by the pleader;
- (5) any other matter required by statute; and
- (6) a certificate of service, as required by §377.9(b) of this title (relating to

Service in Nonrulemaking Proceedings).

(e) *Filing Fees.* Each application, petition, or complaint which is intended to institute a proceeding before the Board shall be accompanied by the filing fee, prescribed by law or these rules.

*Source Note: The provisions of this §377.21 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.23. Motions.**

Any motion relating to a pending proceeding shall, unless made during a hearing, be written and shall set forth the relief sought and the specific reasons and grounds therefore. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with SOAH. The Administrative Law Judge shall at the request of a party or on the court's own motion conduct a hearing on the motion and shall act upon the motion at the earliest practicable time. If neither party requests a hearing on the motion on or before the date the reply to the motion is due, the Administrative Law Judge may choose to not act on the motion.

*Source Note: The provisions of this §377.23 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.25. Amendments.**

Any pleading may be amended up to seven days prior to the hearing thereon or to the contested case hearing, provided that the application, complaint, or petition upon which notice has been issued shall not be amended so as to broaden the scope thereof or unreasonably delay the hearing.

*Source Note: The provisions of this §377.25 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.27. Incorporation by Reference of Board Records.**

Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Board. This rule shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

*Source Note: The provisions of this §377.27 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.29. Personnel Service.**

All notices of which personal service is required by law shall be addressed to the person entitled thereto, and shall set forth the names of all other parties, the nature and subject matter of the proceeding, the time and place of hearing, and any other matter required by law.

*Source Note: The provisions of this §377.29 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.31. Prehearing Conference.**

(a) In any proceeding, the Board or the ALJ, as applicable, on its own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear before the Board or the ALJ at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

- (1) the simplification of issues;
- (2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports, to the end of avoiding the unnecessary introduction of proof;
- (3) the procedure at a hearing;
- (4) the limitation, where possible, of the number of witnesses; and
- (5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlements of such issues as in dispute.

(b) Unless precluded by law, informal dispositions may be made of any contested case by stipulation, agreed settlement, or consent order of default.

(c) Action taken at the conference shall be recorded in an appropriate order by the Board or the ALJ, unless the parties enter into a written agreement approved by the Board or the ALJ.

*Source Note: The provisions of this §377.31 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.33. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Application or Other Matters before SOAH or the Board.**

Motions for postponement, continuance, withdrawal, or dismissal of applications or other matters which have been duly set for hearing shall be in writing, shall be filed with the Board or the ALJ, and distributed to all interested parties, over a certificate of service, not less than five days prior to the date designated for the matter to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such actions and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the Board or ALJ, may result in the dismissal of the application or other matter in issue, with prejudice to refile. Once an application or other matter has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted without the consent of all parties involved, unless the Board or the ALJ, as appropriate shall have ordered such postponement or continuance.

*Source Note: The provisions of this §377.33 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.35. Place and Nature of Hearing.**

All hearings conducted in any proceeding shall be open to the public unless otherwise required by law. Hearings will be held at places designated by the Board or SOAH, as applicable.

*Source Note: The provisions of this §377.35 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.37. Order of Procedure.**

(a) In all proceedings the petitioner, applicant, or complainant, as applicable, shall be entitled to open and close. The Board or the ALJ, as applicable, shall determine at what stage in the proceeding intervenors shall be permitted to offer evidence, if any. After all parties have completed the presentation of their evidence, the Board or the ALJ, as applicable, may call upon any party or the staff of the Board for further material or relevant evidence upon any issue, to be presented at a future hearing after notice to all parties of record, which notice may be announced during such hearing.

(b) The Board or the ALJ, as applicable shall direct all parties to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of the hearing, they shall be heard; otherwise not. If exceptions are sustained, amended pleadings shall be filed in accordance with the ALJ's order prior to the commencement of the hearing, subject to the provisions of §377.25 of this title (relating to Amendments).

*Source Note: The provisions of this §377.37 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.39. Dismissal without Hearing.**

The SOAH rules 1 TAC §155.57 regarding summary disposition shall apply to summary disposition of a case without hearing by the Board or the ALJ, as applicable.

*Source Note: The provisions of this §377.39 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.41. Limitation on Number of Witnesses.**

The Board or the ALJ, as applicable, shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

*Source Note: The provisions of this §377.41 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.43. Exhibits.**

(a) *Form.* Exhibits of documentary character shall be of such size, as set forth in §377.21 of this title (relating to Form and Content of Pleadings), as not to unduly encumber the files and records of the Board. There shall be a brief statement of the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) *Tender and Service.* The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the ALJ, and one copy to each other party of record or his attorney or representative.

(c) *After hearing.* Unless specifically directed by the Board or the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the Board allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

*Source Note: The provisions of this §377.43 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.45. Offer of Proof.**

When testimony is excluded by ruling of the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The ALJ may ask such questions of the witness as is necessary to determine whether the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

*Source Note: The provisions of this §377.45 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.47. Depositions, Subpoenas, and Discovery.**

The taking of depositions, subpoenas, and discovery shall not be permitted except in contested case hearings or as required by law.

*Source Note: The provisions of this §377.47 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.49. Proposals for Decision.**

When a proposal for decision is issued, a copy of the proposal shall be service forthwith on each party or his attorney of record. Upon the expiration of the 20th day following issuance of the Proposal for Decision, the proposal for decision may be adopted by written order of the Board, unless exceptions and briefs shall have been filed in the manner required in §377.51 of this title (relating to Filing of Exceptions, Briefs, and Replies).

*Source Note: The provisions of this §377.49 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.51. Filing of Exceptions, Briefs, and Replies.**

Any party of record may, within 20 days after the date of the issuance of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the deadline for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the ALJ, and a copy thereof shall be served on all other parties of record by the party making such request. The ALJ shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interest of justice so requires.

*Source Note: The provisions of this §377.51 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.53. Form and Content of Briefs, Exceptions, and Replies.**

Briefs, exceptions, and replies shall be of such size and conform, as near as possible to the form of pleadings as set forth in §377.21(a) and (c) of this title (relating to Form and Content of Pleadings). The points involved shall be concisely stated. The evidence in support of each point shall be abstracted or summarized, and/or briefly stated in the form of proposed findings of fact. Complete citations to the page number of the record or exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Briefs may be filed prior to the issuance of a proposal for decision only when requested or permitted by the ALJ.

*Source Note: The provisions of this §377.53 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.55. Oral Argument.**

Any party may request oral argument to be presented to the Board at the meeting scheduled for final determination of the party's case, but oral argument shall be allowed only in the sound discretion of the Board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

*Source Note: The provisions of this §377.55 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.57. Motions for Rehearing.**

A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date a final decision or order is issued. Replies to a motion for rehearing must be filed with the Board within 25 days after the date the final decision or order is issued. If Board action is not taken within the 45-day period after the final decision or order is issued, the motion for rehearing is overruled by operation of law. The Board may, by written order, extend the period of time for filing the motions and replies and for taking Board action, except that an extension may not extend the period for Board action beyond 90 days after the date the final decision or order is issued. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement, with the approval of the Board, provide for a modification of the times provided in this section.

*Source Note: The provisions of this §377.57 adopted to be effective July 5, 2006, 31 TexReg 5294.*

**§377.59. Show Cause Orders and Complaints.**

The Board, either on its own motion or upon receipt of sufficient written complaint, may, in its sound discretion, at any time after notice to all interested parties, including personal service upon the licensee, cite any person operating under its jurisdiction to appear before SOAH in a public hearing and require him/her to show cause why his/her license or certificate or other authority should not be revoked, cancelled, suspended, limited, amended, or why such person should not be reprimanded or censored, or why such other action available to the Board not be taken, for the failure to comply with any applicable statute, or the rules, orders of the Board, or for the failure to abide by the terms and provisions of the license. All hearings in such proceedings shall be conducted by SOAH in accordance with the provisions of these rules.

*Source Note: The provisions of this §377.59 adopted to be effective July 5, 2006, 31 TexReg 5294.*

## CHAPTER 378 CONTINUING EDUCATION AND LICENSE RENEWAL

Sec.

- 378.1 Continuing Education Requirement
- 378.3 Exceptions and Allowances
- 378.5 Method of Approval of Hours
- 378.7 Certification
- 378.9 Violations
- 378.11 Inactive License Status
- 378.13 License Renewal

### §378.1. Continuing Education Requirement.

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 50 hours of biennial continuing education (CME) shall be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations or governmental entities, are acceptable towards fulfilling this 2 hour requirement.

(b) A licensee shall receive 100% credit for each hour of training (one hour of training equals one hour of CME) for podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board. If a podiatric physician gives a lecture, he/she can receive the same CME credit that a podiatrist attending the lecture obtains.

(c) A licensee shall receive 100% credit for each hour of training (one hour of training equals one hour of CME) for non-podiatric medical sponsored meetings that are relative to podiatric medicine. The method used to determine whether the training is "relative" to podiatric medicine is: "will the training enhance the knowledge and abilities of the podiatric physician in terms of improved quality and delivery of patient care?" One hundred percent credit shall also be assigned to hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others at the discretion of the Board.

(d) It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 50-hour biennial requirement meet the standards for CME as set by the Board. One hour of CME is defined as a typical fifty-minute classroom instructional session or its equivalent. Practice management, home study and self study programs will be accepted for CME credit hours only if the provider is approved by the Council for Podiatric Medical Education. The licensee may obtain up to, but not exceed 20 hours of the aforementioned hours per biennium.

(e) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six hours of CME credit (credit can only be obtained for one, not both). No on-line CPR certification will be accepted for CME credit. Contact courses only will be given CME credit.

(f) If a podiatric physician has an article published (not just submitted) in a peer review journal, (s)he may receive one hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(g) Attendance in a mandatory Podiatric Medical Reviewer initial training course will receive credit for four CME hours.

(h) Podiatric Medical Reviewers will receive one CME hour per case reviewed. A maximum of four CME hours per biennium is allowed for case reviews.

(i) These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 50-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period.

(j) Documentation of CME courses shall be made available to the Board upon request, but should not be sent to the Board via facsimile, or mailed with the annual license renewal form. Each licensee shall maintain the licensee's CME records at the licensee's practice location for four years, evidencing completion of the CME programs completed by the licensee. The Board shall conduct random checks of licensee CME documentation to ensure compliance with this rule.

(k) A percentage of podiatric physicians who renew their licenses will be required to produce proof of completion of the CME hours they affirmed obtaining on their annual license renewal notice. The licensees to be reviewed will be chosen randomly out of the pool of annual license renewal forms. Once a licensee has been randomly chosen for the CME audit, he/she will receive a letter requiring the licensee to submit to the Board proof of the hours claimed on the annual renewal form. Original documents will not be required; copies of certificates and forms will be sufficient.

(l) If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and/or an administrative penalty per violation up to the maximum allowed by law.

(m) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.

(n) The Board may assess the continuing education needs of a licensee and require the licensee to attend continuing education courses specified by the Board.

(o) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of 50 hours required every two years.

*Source Note: The provisions of this §378.1 adopted to be effective July 5, 2006, 31 TexReg 5295; amended to be effective March 4, 2008, 33 TexReg 1809.*

### **§378.3. Exceptions and Allowances.**

(a) Delinquency for continuing education may be allowed in cases of hardship as determined on an individual basis by the Texas State Board of Podiatric Medical Examiners. In cases of such hardships, hours of delinquency must be current at the end of a three-year period.

(b) Any practitioner not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming practice of podiatric medicine, that person shall fulfill the requirements of the preceding year from the effective date prior to his resumption of practice.

(c) All cases not covered by the above shall be considered individually by the Board for continuing education.

*Source Note: The provisions of this §378.3 adopted to be effective July 5, 2006, 31 TexReg 5295.*

#### **§378.5. Method of Approval of Hours.**

(a) Any program approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association may be approved by the Texas State Board of Podiatric Medical Examiners.

(b) Hours obtained in Colleges or Universities while working on a degreed or non-degreed program or an approved residency program by the Council on Education and providing these courses shall be of a medical nature, shall be considered as having fulfilled the requirements of continuing education hours for the fiscal year.

(c) Hours of continuing education submitted to the State Board for approval, by any member, must be certified by the Continuing Education Director of the institution or organization from which the hours were obtained, that he/she was in actual attendance for the specified period.

(d) Holders of current Cardio-Pulmonary Resuscitation certificates are eligible for three hours credit of continuing education or, current Advance Life Support Course certificates are eligible for six hours credit of continuing education.

*Source Note: The provisions of this §378.5 adopted to be effective July 5, 2006, 31 TexReg 5295.*

#### **§378.7. Certification.**

Texas State Board of Podiatric Medical Examiners or whoever it designates will approve all continuing medical education (CME) credits.

*Source Note: The provisions of this §378.7 adopted to be effective July 5, 2006, 31 TexReg 5295.*

#### **§378.9. Violations.**

Any podiatric physician who violates sections in this chapter are hereby subject to revocation, probation, cancellation and/or suspension of their podiatric physicians' license as provided by Texas Occupations Code §202.501(a).

*Source Note: The provisions of this §378.9 adopted to be effective July 5, 2006, 31 TexReg 5295.*

#### **§378.11. Inactive License Status.**

(a) A licensee may place a license on inactive status by applying for inactive status on a form prescribed by the Board before the date of the expiration of the license and by complying with all license renewal requirements other than the continuing education requirements.

(b) A holder of a license that is on inactive status may not practice podiatric medicine in this state. The practice of podiatric medicine by a holder of a license that is on inactive status constitutes the practice of podiatric medicine without a license.

(c) A licensee may remain on inactive status for four years. In order for a licensee to return to active status, the licensee must complete 15 hours of continuing education per year of inactive status not to exceed four years in addition to any outstanding hours of continuing education and pay the required renewal license fees prior to the expiration of the four years. If

licensee does not return to active status prior to the expiration of four years, the license is delinquent and the licensee must pay a late renewal penalty in addition to the requirements for returning to active status.

*Source Note: The provisions of this §378.11 adopted to be effective July 5, 2006, 31 TexReg 5295.*

### **§378.13. License Renewal.**

(a) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee. A license to practice podiatric medicine expires on October 31 of each year. To be eligible to renew the license, a licensee must comply with the continuing education requirements prescribed by the Board. Upon completion of proper renewal, an annual renewal certificate for the current year will be issued. For purposes of public verification, the license is considered to be in an "Active" status.

(b) A person with an expired license who practices podiatry without an annual renewal certificate for the current year is considered to be practicing without a license. For purposes of public verification, the license is considered to be in a "Delinquent" status. "Delinquent" license holders will be allowed a 30-day grace period to renew their licenses. Beginning on December 1<sup>st</sup> of each year, the Board will enforce practicing without a license penalties to include the issuance of Cease & Desist Notices or Orders.

(c) If a person's "Delinquent" license has been expired for 90 days or less, the person may renew the license by paying to the Board a fee equal to 1-1/2 times the required renewal fee.

(d) If a person's "Delinquent" license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to two times the required renewal fee.

(e) If a person's "Delinquent" license has been expired for one year or longer, the person may not renew the license. For purposes of public verification, the license is then considered to have been "Cancelled". The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. The Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must complete an application prescribed by the Board and pay to the Board a fee that is equal to the examination fee for the license.

(f) The annual renewal application and/or postcard notice will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

*Source Note: The provisions of this §378.13 adopted to be effective July 5, 2006, 31 TexReg 5295; amended to be effective September 9, 2007, 32 TexReg 5699.*

## CHAPTER 382 RADIOLOGIC TECHNOLOGISTS

Sec.

- 382.1 Purpose
- 382.3 Definitions
- 382.5 Registration
- 382.7 Non-Certified Podiatric Technician's Scope of Practice
- 382.9 Annual Renewal
- 382.11 Suspension, Revocation, or Non-renewal of Registration

### §382.1. Purpose.

The purpose of these rules is to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601 and Texas Department of State Health Services Rules 25 TAC Chapter 140 Subchapter J, applicable to non-certified radiologic technicians or non-certified technicians.

*Source Note: The provisions of this §382.1 adopted to be effective July 5, 2006, 31 TexReg 5299; amended to be effective October 14, 2010, 35 TexReg 9100.*

### §382.3. Definitions.

The following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) *Board* --The Texas State Board of Podiatric Medical Examiners
- (2) *CME* --Continuing medical education
- (3) *Non-certified podiatric medical technician or registrant* --A person

who:

(A) has completed a training program approved by the Texas Department of State Health Services and the Board by January 1, 1998; however, if the person is employed after January 1, 1998, the training program approved by the TDSHS and the Board shall be completed prior to the person performing podiatric radiological procedures for any podiatric medical purpose;

(B) may be referenced by the Texas Department of State Health Services as a "Non-Certified Technician (NCT)," "Non-Certified Technician-Podiatric (NCT-Podiatric)" or a "Podiatric Medical Assistant (PMA)".

(C) is registered with the Board as a "Podiatric Medical Radiological Technician".

(4) *Supervision* --Responsibility for the control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to the foot and ankle for production of standard radiographs utilized in podiatric medicine for diagnostic purposes.

(5) *TDSHS* --Texas Department of State Health Services.

(6) *TRCR* --Texas Regulations for Control of Radiation, 25 TAC Chapter 289. The regulations are available from the Texas Department of State Health Services Radiation Control Program.

*Source Note: The provisions of this §382.3 adopted to be effective July 5, 2006, 31 TexReg 5299; amended to be effective October 14, 2010, 35 TexReg 9100.*

**§382.5. Registration.**

(a) Any person performing podiatric radiological procedures as defined in §382.7 of this title (relating to Non-Certified Podiatric Technician's Scope of Practice), under the supervision of a licensed Texas podiatric physician must be registered with the Board as a "Podiatric Medical Radiological Technician".

(b) This section does not apply to persons certified by TDSHS under the Medical Radiologic Technologist Certification Act who are Certified Medical radiologic Technologists (MRT's) or Limited Medical Radiologic Technologists (LMRT's).

(c) An applicant shall make application for registration with the Board, which includes a list of the applicants' supervising podiatric physician(s). Multiple podiatric physicians may be listed on a single application form. Each podiatric physician will have equal rights and responsibility to supervise a particular non-certified podiatric medical technician.

(d) Applicant shall:

(1) Receive training and instruction as set out in 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians) and/or 25 TAC §140.522 (relating to alternate Training Requirements). Proof of successful completion of mandatory training must be provided (copy of certificate) to the Board upon application; and

(2) be 18 years of age or older.

(e) Applicant must pay appropriate fee established by the Board as defined in §371.3 of this title (relating to Fees) at the time of application.

*Source Note: The provisions of this §382.5 adopted to be effective July 5, 2006, 31 TexReg 5299; amended to be effective October 14, 2010, 35 TexReg 9100.*

**§382.7. Non-Certified Podiatric Technician's Scope of Practice.**

(a) A registrant may perform only foot and ankle radiological procedures utilizing standard film or film screen in combinations and radiographic equipment designed for foot and ankle radiological procedures for the practice of podiatric medicine.

(b) A registrant shall perform radiological procedures only under the supervision of a podiatric physician physically present on the premises.

(c) All registrants must comply with the safety rules of the TDSHS relating to the control of radiation as set forth in that department's document titled, "Texas Regulations for Control of Radiation".

*Source Note: The provisions of this §382.7 adopted to be effective July 5, 2006, 31 TexReg 5299.*

**§382.9. Annual Renewal.**

(a) Registrants shall renew the registration annually by submitting a registration application, paying a fee, as specified by the Board, to the Board by cashier's check or money order.

(b) If the annual registration fee is not received on or prior to the expiration date of the registration, the following penalty will be imposed.

(1) one (1) to thirty (30) days late-\$25.00 plus the annual registration fee;

(2) over thirty (30) days late-registration may not be renewed. The person may obtain a new registration by complying with the requirements and procedures for obtaining an original certification.

(c) Registrants shall inform the Board of any address change or change of supervising podiatric physician within two (2) weeks.

*Source Note: The provisions of this §382.9 adopted to be effective July 5, 2006, 31 TexReg 5299; amended to be effective September 9, 2007, 32 TexReg 5700.*

**§382.11. Suspension, Revocation, or Non-renewal of Registration.**

(a) The Board may refuse to issue or renew a registration to an applicant and may take any disciplinary action against a non-certified podiatric medical technician who:

(1) violates the Podiatric Medical Practice Act, the Rules of the Board, an order of the Board previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the Board;

(2) violates the Medical Radiologic Technologist Certification Act, or the Rules promulgated by the TDSHS;

(3) violates the Rules of the TDSHS for Control of Radiation;

(4) obtains, attempts to obtain, or uses a registration by bribery or fraud;

(5) engages in unprofessional conduct, including but not limited to, conviction of a crime, commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care, and commission of an act or moral turpitude;

(6) develops or has an incapacity that prevents the practice of podiatric radiologic technology with reasonable skill, competence, and safety to the public as a result of:

(A) an illness;

(B) drug or alcohol dependency; or habitual use of drug or intoxicating liquors; or

(C) another physical or mental condition;

(7) fails to practice as a non-certified podiatric technician in an acceptable manner consistent with public health and welfare;

(8) has disciplinary action taken against a certification, permit, or registration as a non-certified podiatric technician in another state, or by another regulatory agency;

(9) engages in acts requiring registration under these rules without a current registration from the Board;

(10) has had a registration revoked, suspended, or has received disciplinary action.

(b) The Board may suspend, revoke, or refuse to issue or renew the registration of a non-certified podiatric technician, upon finding that a non-certified podiatric technician has committed any offense listed in this section.

(c) The applicant may seek a hearing under the Administrative Procedure Act.

*Source Note: The provisions of this §382.11 adopted to be effective July 5, 2006, 31 TexReg 5299.*

## CHAPTER 389 ORGANIZATION AND STRUCTURE

Sec.

389.1 Purpose

389.3 Definitions

389.5 Professional Conduct

389.7 Membership and Employee Restrictions

389.9 Grounds for Removal

### §389.1. Purpose.

The purpose of these rules is to avoid, detect, address and remedy conflicts of interest by developing and implementing policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board consistent with the Governor's Mission & Governor's Philosophy, Agency Mission & Agency Philosophy and the Strategic Planning Process.

*Source Note: The provisions of this §389.1 adopted to be effective March 4, 2008, 33 TexReg 1809.*

### §389.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Board* - The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §202.001, et seq.

(2) *Board Member* --A person lawfully appointed by the governor to serve a term as set by law on the board.

(3) *Executive Director* --An employee of the Board who manages the day-to-day operations of the Board.

(4) *Investigator* --Employee, Agent or Person designated by the board to conduct investigations on behalf of the board. The term includes Podiatric Medical Reviewers.

*Source Note: The provisions of this §389.3 adopted to be effective March 4, 2008, 33 TexReg 1809.*

### §389.5. Professional Conduct.

A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use of their official position to imply professional superiority or competence.

(10) A board member should avoid the use of their official position as an endorsement in any health care related matter. Because an expert witness, by necessity, must disclose the witness's resume, which will include membership on the board, and because any health care related lawsuit could become the subject of a board investigation, a board member should not appear as an expert witness in any case.

(11) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

*Source Note: The provisions of this §389.5 adopted to be effective March 4, 2008, 33 TexReg 1809.*

#### **§389.7. Membership and Employee Restrictions.**

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

*Source Note: The provisions of this §389.7 adopted to be effective March 4, 2008, 33 TexReg 1809.*

#### **§389.9. Grounds for Removal.**

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Texas Occupations Code §202.051 or §202.053;

(2) does not maintain during service on the board the qualifications required by Texas Occupations Code §202.051 or §202.053;

(3) is ineligible for membership under Texas Occupations Code §202.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board.

(b) The board shall develop and implement an additional "Division of Responsibilities" policy to set forth clarifications and separations of power, and remedies to include penalties for the abuse of any power by a board member or employee.

(c) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(d) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

*Source Note: The provisions of this §389.9 adopted to be effective March 4, 2008, 33 TexReg 1809.*

**CHAPTER 390 PROCEDURES FOR THE NEGOTIATION AND MEDIATION OF  
CERTAIN BREACH OF CONTRACT CLAIMS ASSERTED BY  
CONTRACTORS AGAINST THE STATE OF TEXAS**

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## SUBCHAPTER A. GENERAL

### §390.1. Purpose.

These rules are intended to serve as guidelines for units of state government for the negotiation and mediation of a claim of breach of contract asserted by a contractor against a unit of state government under the Government Code, Chapter 2260. These rules may be adopted or modified, as appropriate, by units of state government with rulemaking authority. These rules are not binding but should be considered as recommendations to units of state government. These rules are not intended to replace agency procedures relating to breach of contract claims that are mandated by state or deferral law, but are intended to provide suggested procedures when none are so mandated. The parties to a contract are encouraged to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

*Source Note: The provisions of this §390.1 adopted to be effective March 9, 2004, 29 TexReg 2312.*

### §390.3. Applicability.

(a) This chapter does not apply to an action of a unit of state government for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(b) This chapter does not apply to a contract action proposed or taken by a unit of state government for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Government Code, Chapter 2001.

(c) This chapter does not apply to contracts:

(1) between a unit of state government and the federal government or its agencies, another state or another nation;

(2) between two or more units of state government;

(3) between a unit of state government and a local governmental body, or a political subdivision of another state;

(4) between a subcontractor and a contractor;

(5) subject to §201.112 of the Transportation Code;

(6) within the exclusive jurisdiction of state or local regulatory bodies;

(7) within the exclusive jurisdiction of federal courts or regulatory bodies; or

(8) that are solely and entirely funded by federal grant monies other than for a project defined in §390.5(10) of this chapter (relating to Definitions).

*Source Note: The provisions of this §390.3 adopted to be effective March 9, 2004, 29 TexReg 2312.*

### §390.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Chief administrative officer--The commissioner, executive director, president or other executive officer responsible for the day to day operations of a unit of state government.

(2) Claim--A demand for damages by the contractor based upon the unit of state government's alleged breach of the contract.

(3) Contract--A written contract between a unit of state government and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for a unit of state government; or

(B) to perform a project as defined by Government Code, §2166.001.

(4) Contractor--Independent contractor who has entered into a contract directly with a unit of state government. The term does not include:

(A) The contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) An employee of a unit of state government; or

(C) A student at an institution of higher education.

(5) Counterclaim--A demand by the unit of state government based upon the contractor's claim.

(6) Day--A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this act.

(7) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of the unit of state government to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the unit of state government for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price; including orders for additional work, after deducting any amount owed the unit of state government for work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by the unit of state government, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(C) The lists in subparagraphs(A) and (B) of this paragraph should not be considered exhaustive but are merely illustrative in nature.

(8) Goods--Supplies, materials or equipment.

(9) Parties--The contractor and unit of state government that have entered into a contract in connection with which a claim of breach of contract has been filed under this chapter.

(10) Project--As defined in Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(11) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of a unit of state government.

(12) Unit of state government of unit--The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the Constitution or statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

*Source Note: The provisions of this §390.5 adopted to be effective March 9, 2004, 29 TexReg 2312.*

#### **§390.7. Prerequisites to Suit.**

The procedures contained in this chapter are exclusive and required prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

*Source Note: The provisions of this §390.7 adopted to be effective March 9, 2004, 29 TexReg 2312.*

#### **§390.9. Sovereign Immunity.**

This chapter does not waive a unit of state government's sovereign immunity to suit or liability.

*Source Note: The provisions of this §390.9 adopted to be effective March 9, 2004, 29 TexReg 2312.*

### **SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES.**

#### **§390.21. Notice of Claim of Breach of Contract.**

(a) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the unit of state government designated in the contract to receive a notice of claim of breach of contract under the Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the unit's chief administrative officer, and

(3) state in detail:

(A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(C) the legal theory of recover, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the contractor may submit supporting documentation or other tangible evidence to facilitate the unit's evaluation of the contractor's claim.

(d) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim; provided, however, that a contractor shall deliver notice of a claim that was pending before a unit of state government on August 30, 1999, to the unit no later than February 26, 2000.

*Source Note: The provisions of this §390.21 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **§390.23. Agency Counterclaim.**

(a) A unit of state government asserting a counterclaim under the Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim shall:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(c) In addition to the mandatory contents of the notice of counterclaim required by subsection (b) of this section, the unit may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the unit's counterclaim.

(d) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the unit of state government's receipt of the contractor's notice of claim.

(e) Nothing herein precludes the unit of state government from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

*Source Note: The provisions of this §390.23 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **§390.25. Request for Voluntary Disclosure of Additional Information.**

(a) Upon the filing of a claim or counterclaim, parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(1) accounting records;

(2) correspondence, including, without limitation, correspondence between the unit and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(3) schedules;

(4) the parties' internal memoranda'

(5) documents created by the contractor in preparing its offer to the unit and documents created by the unit in analyzing the offers it received in response to a solicitation.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The contractor and the unit of state government may seek additional information directly from third parties, including, without limitation, the unit's third-party consultants and the contractor's subcontractors.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(e) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

*Source Note: The provisions of this §390.25 adopted to be effective March 9, 2004, 29 TexReg 2313.*

#### **§390.27. Duty to Negotiate.**

The parties shall negotiate in accordance with the timetable set forth in §390.29 of this chapter (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

*Source Note: The provisions of this §390.27 adopted to be effective March 9, 2004, 29 TexReg 2313.*

#### **§390.29. Timetable.**

(a) Following receipt of a contractor's notice of claim, the chief administrative officer of the unit of state government or other designated representative shall review the contractor's claim(s) and the unit's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the unit of state government received the contractor's notice of claim.

(c) The unit of state government may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(2) delivering written notice to the contractor when the unit is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the unit of state government received the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the unit of state government received the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain.

The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §390.39 of this chapter (relating to Request for Contested Case Hearing) after the 270th day after the unit received the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 270th day after the unit of state government receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by Subchapter C of this chapter.

(i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

*Source Note: The provisions of this §390.29 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **§390.31. Conduct of Negotiation.**

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with Subchapter C of this chapter. Parties may choose an assisted negotiation process other than mediation, including without limitation, processes such as those described in Subchapter D of this chapter.

(c) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(d) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

*Source Note: The provisions of this §390.31 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **§390.33. Settlement Approval Procedures.**

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

*Source Note: The provisions of this §390.33 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **§390.35. Settlement Agreement.**

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the unit of state government who have authority to bind each respective party.

(c) A partial settlement does not waive a parties' rights under the Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

*Source Note: The provisions of this §390.35 adopted to be effective March 9, 2004, 29 TexReg 2313.*

#### **§390.37. Costs of Negotiation.**

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

*Source Note: The provisions of this §390.37 adopted to be effective March 9, 2004, 29 TexReg 2313.*

#### **§390.39. Request for Contested Case Hearing.**

(a) If a claim for breach on contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this chapter on or before the 270th day after the unit received the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §390.29(f) of this chapter (relating to Timetable), the contractor may file a request with the unit of state government for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief administrative officer of the unit of state government or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §390.29(f) of this chapter.

(c) The unit of state government shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the unit of state government if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

*Source Note: The provisions of this §390.39 adopted to be effective March 9, 2004, 29 TexReg 2313.*

### **SUBCHAPTER C. MEDIATION OF CONTRACT DISPUTES**

#### **§390.47. Mediation Timetable.**

(a) The contractor and unit of state government may agree to mediate the dispute at any time before the 270th day after the unit of state government received a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(b) A contractor and unit of state government may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

*Source Note: The provisions of this §390.47 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.49. Conduct of Mediation.**

(a) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(c) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

*Source Note: The provisions of this §390.49 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.51. Agreement to Mediate.**

(a) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter in to the contract and include a contractual provision to do so. The parties may mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(b) Any agreement to mediate should include consideration of the following factors:

(1) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under §154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualification set forth in §390.53 of this chapter (relating to Qualifications and Immunity of the Mediator).

(2) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(3) The location of the mediation.

(4) Allocation of costs of the mediator.

(5) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within the governmental unit or contracting entity.

(6) The settlement approval process in the event the parties reach agreement at the mediation.

*Source Note: The provisions of this §390.51 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.53. Qualifications and Immunity of the Mediator.**

(a) The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(b) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

*Source Note: The provisions of this §390.53 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.55. Confidentiality of Mediation and Final Settlement Agreement.**

(a) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(b) The confidentiality of a final settlement agreement to which a unit of state government is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

*Source Note: The provisions of this §390.55 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.57. Costs of Mediations.**

Unless the contractor and unit of state government agree otherwise, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

*Source Note: The provisions of this §390.57 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.59. Settlement Approval Procedures.**

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

*Source Note: The provisions of this §390.59 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.61. Initial Settlement Agreement.**

Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the unit of state government, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

*Source Note: The provisions of this §390.61 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.63. Final Settlement Agreement.**

(a) A final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim shall be in writing and signed by representatives of the contractor and the unit of state government who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(c) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

*Source Note: The provisions of this §390.63 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.65. Referral to the State Office of Administrative Hearings.**

If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the unit of state government. Nothing in these rules prohibits the contractor and unit of state government from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

*Source Note: The provisions of this §390.65 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**SUBCHAPTER D. ASSISTED NEGOTIATION PROCESSES**

**§390.71. Assisted Negotiation Processes.**

Parties to a contract dispute under Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes in addition to negotiation and mediation to resolve their dispute.

*Source Note: The provisions of this §390.71 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.73. Factors Supporting the Use of Assisted Negotiations Processes.**

The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

- (1) The parties recognize the benefits of an agreed resolution of the dispute;
- (2) The expense of proceeding to contested case hearing at SOAH is substantial and might outweigh any potential recovery;
- (3) The parties want an expedited resolution;
- (4) The ultimate outcome is uncertain;
- (5) There exists factual or technical complexity or uncertainty which would benefit from expertise of a third-party expert for technical assistance or fact-finding;
- (6) The parties are having substantial difficulty communicating effectively;
- (7) A mediator third party could facilitate the parties' realistic evaluation of their respective cases;
- (8) There is an on-going relationship that exists between parties;
- (9) The parties want to retain control over the outcome;
- (10) There is a need to develop creative alternatives to resolve the dispute;
- (11) There is a need for flexibility in shaping relief;
- (12) The other side has an unrealistic view of the merits of their case;
- (13) The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

*Source Note: The provisions of this §390.73 adopted to be effective March 9, 2004, 29 TexReg 2313.*

**§390.75. Use of Assisted Negotiation Processes.**

Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

- (1) Mediation. (See Subchapter C in this chapter.)
- (2) Early evaluation by a third-party neutral.

(A) This is a confidential conference where the parties and their counsel present the factual and legal bases of their claim and receive a non-binding assessment by an

experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentation, the third-party neutral identifies areas of agreement for possible stipulation, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the mini-trial, described in paragraph (4) of this section. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

- (i) The parties agree that the dispute can be settled;
- (ii) The dispute involves specific legal issues;
- (iii) The parties disagree on the amount of damages;
- (iv) The opposition has an unrealistic view of the dispute;
- (v) The neutral is a recognized expert in the subject area or area of

law involved.

### (3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

- (i) Factual issues requiring expert testimony may be dispositive of liability or damage issues;
- (ii) The use of a neutral is cost effective;
- (iii) The neutral's findings could narrow factual issues for contested case hearing.

### (4) Mini-trial.

(A) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases; a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage should be brief but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witness's testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than 1 - 2 days.

(D) Settlement discussions, facilitated by the third-party neutral, take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

(E) Mini-trials may be appropriate when:

- (i) The dispute is at a stage where substantial costs can be saved by a resolution based on limited information gathering;
- (ii) The matter justifies the senior executive time required to complete the process;
- (iii) The issues involved include highly technical mixed questions of law and fact;
- (iv) The matter involves trade secrets or other confidential or proprietary information; or
- (v) The parties seek to narrow the large number of issues in dispute.

*Source Note: The provisions of this §390.75 adopted to be effective March 9, 2004, 29 TexReg 2313.*

## APPENDIX

- A Figure: 22 TAC §375.9(a) - Complaint Sign
- B Figure: 22 TAC §375.23(i) - Medical Professional Liability Claims Report
- C Figure: 22 TAC §376.5(c) - Complaint/Penalty Matrix
- D Figure: 22 TAC §376.25 - Complaint Form

# NOTICE

## COMPLAINTS

CONCERNING ANY PERSON LICENSE BY THE  
TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

**SHOULD BE SENT TO**

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
INVESTIGATION DIVISION

P.O. BOX 12216  
AUSTIN, TX 78711-2216

TEL: (512) 305-7000  
NATIONAL: 1-800-821-3205  
FAX: (512) 305-7165 or (512) 305-7003  
WEB: <http://www.foot.state.tx.us>

This Notice is required to be "on a sign prominently displayed in the place of business of each individual or entity regulated by the Board" (22 TAC §375.9)

# AVISO

# QUEJAS

SOBRE CUALQUIER PERSONA LICENCIADA/REGULADA POR:  
CONSEJO ESTAL DE EXAMINADORES MÉDICOS DE PODIATRÍA DE TEJAS

**DEBEN DE SER ENVIADAS HA:**

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
INVESTIGATION DIVISION

P.O. BOX 12216  
AUSTIN, TX 78711-2216

TEL: (512) 305-7000  
LINEA NACIONAL: 1-800-821-3205  
FAX: (512) 305-7165 o (512) 305-7003  
WEB: <http://www.foot.state.tx.us>

Este AVISO será visualizado de una manera llamativa y destacada en todos los negocios al sujeto de las regulaciones de la Consejo donde se podrá ver por todos los pacientes, conforme a 22 TAC §375.9

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
P.O. Box 12216  
Austin, Texas 78711-2216  
MEDICAL PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PODIATRIC PHYSICIAN.  
PART I. COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer: \_\_\_\_\_
2. Defendant podiatric physician: \_\_\_\_\_  
License number: \_\_\_\_\_
3. Plaintiff's name: \_\_\_\_\_
4. Policy number: \_\_\_\_\_
5. Date claim reported to insurer/self-insured podiatric physician: \_\_\_\_\_
6. Type of complaint: \_\_\_\_\_ claim only \_\_\_\_\_ lawsuit
7. Initial reserve amount after investigation: \_\_\_\_\_

(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with T.S.B.P.M.E.)

\_\_\_\_\_  
Person completing this report

\_\_\_\_\_  
Phone number

PART II. COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C. 375.23, INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE T.S.B.P.M.E. WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C. 375.23

8. Date of disposition: \_\_\_\_\_
9. Type of disposition:  
\_\_\_\_\_ (1) Settlement  
\_\_\_\_\_ (2) Judgment after trial  
\_\_\_\_\_ (3) Other (please specify)

10. Amount of indemnity agreed upon or ordered on behalf of this defendant: \_\_\_\_\_

\$ \_\_\_\_\_ Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (example: \$1000,000/3)

11. Appeal, if known: \_\_\_\_\_ Yes \_\_\_\_\_ No. If yes, which party:  
\_\_\_\_\_

\_\_\_\_\_  
Person completing this report

\_\_\_\_\_  
Phone number

## Texas State Board of Podiatric Medical Examiners Complaint/Penalty Matrix

Category of Complaint Priority/Severity Level	Death	Substance Abuse	Fraud	Negligence	Advertising	Fees	Records	Inappropriate Physician Behavior	Impaired Physician	Office Inspection
I	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	
II		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
III		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
IV		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						
V		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						

### Severity Levels

- Level 1**  
Violations that have, had, or may have an adverse impact on the health or safety of a patient to include serious harm, permanent injury, or death. May result in license revocation.
- Level 2**  
Violations that have, had, or may have an adverse impact on the health or safety of a patient but less serious than Level 1 and may result in revocation/suspension of license.
- Level 3**  
Violations that have, had, or may have an impact on the safety or health of a patient. Violations may be repeated and/or flagrant and may result in probated suspension.
- Level 4**  
Violations that have, had, or may have more than minor significance, but if left uncorrected or unrecognized could lead to more serious circumstances resulting in possible reprimand and/or administrative penalties.
- Level 5**  
Violations that are non-serious infractions of the Act or Rules that may result in an informal reprimand or letter of reprimand.

\* It should be noted that the matrix is to be used only as a guide. Due to the varying nature of complaints and supporting documentation, penalties assessed may be placed in different severity levels.



**TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
COMPLAINT FORM**

**Date:** \_\_\_\_\_

It is very important that you fill out this form completely. Please type or neatly print in black or blue ink. If we are unable to read your complaint, we will not be able to help you.

**Mail To:**  
TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS  
INVESTIGATIONS DIVISION  
P.O. Box 12216  
Austin, Texas 78711-2216

1.	COMPLAINANT'S FULL NAME:	COMPLAINANT'S ADDRESS (Street):	
		(City, State, Zip):	
	HOME TELEPHONE #: ( ) -	COMPLAINANT'S DATE OF BIRTH (mm/dd/yyyy):	
	WORK TELEPHONE #: ( ) -		
2.	PODIATRIST INVOLVED:		
	ADDRESS:	CITY, STATE, ZIP:	
	OFFICE TELEPHONE #: ( ) -		
3.	(Other Podiatry/Medical Opinions Received):		
	NAME:	ADDRESS:	TELEPHONE #: ( ) -
	(Other Podiatry/Medical Opinions Received):		
	NAME:	ADDRESS:	TELEPHONE #: ( ) -
4.	Nature of Complaint(s):		
	Clearly state the nature of your complaint and enclose copies of any records, or reports from a second podiatrist (DPM) or physician (MD/DO) which will support your statement. <b>COMPLAINT FORM MUST BE SIGNED &amp; DATED.</b> (Attached Additional Pages if Necessary.)		



## THE CITIZEN COMPLAINT PROCESS

[<http://www.foot.state.tx.us/complaint.htm>]

### WHO MAY FILE A COMPLAINT?

Anyone may file a complaint with the Texas State Board of Podiatric Medical Examiners against a podiatrist.

### HOW DO I FILE A COMPLAINT?

A complaint must be submitted in writing; signed/dated. You may use this form for that purpose.

### HOW ARE COMPLAINTS INVESTIGATED?

Trained professionals investigate the complaints. An investigator may contact you for additional information, to secure your written statement, or for written permission to obtain copies of your medical records if necessary/warranted.

A complaint involving physician competency may require a lengthy investigation by medical experts.

All investigative material (including medical records, investigator's reports, and reviews by board consultants) become part of the Board's confidential investigative files.

### WILL I BE TOLD THE STATUS OF MY COMPLAINT

You will receive a letter acknowledging receipt of your complaint.

If your complaint is within the Board's jurisdiction, we will reasonably notify you of the status of your complaint, unless such notice would jeopardize an investigation, until final action is taken.

Should your complaint be outside the Board's jurisdiction, we will notify you.

### WHAT COMPLAINTS DO NOT FALL WITHIN THE BOARD'S JURISDICTION?

Rudeness, records, fee/billing complaints, professional disputes/conflicts, etc. and the like. These issues can be directed to the state Podiatric Society or Trade Association (i.e. Texas Podiatric Medical Association; 512-494-1123; <http://www.txpma.org>).

Complaints against doctors who are not D.P.M.s and complaints regarding other health care providers or hospitals. Such complaints should be directed to the appropriate state licensing agency: <http://www.texas.gov>

Complaints regarding the unlicensed practice of podiatry should be referred to your local police department, as this activity is a criminal misdemeanor.

### WHAT COMPLAINTS ARE WITHIN THE BOARD'S JURISDICTION?

The most frequent types of consumer complaints are:

Non-therapeutic prescribing/administering of a drug or treatment;

Professional incompetency;

Inability to practice podiatry by reason of mental or physical impairment (alcohol or chemical abuse, mental or physical condition);

Unprofessional conduct which may endanger the public.

### WHAT ACTION CAN THE BOARD TAKE?

If we lack sufficient evidence of a violation of the Podiatry Practice Act, then we will close the investigation.

If the investigation establishes that a podiatrist violated the Podiatry Practice Act, the Board may order corrective procedures or disciplinary action ranging from a written reprimand to the most severe measure, revocation of license.