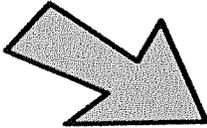




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**PODIATRIC MEDICAL PRACTICE ACT  
OF TEXAS**

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

**AND**

**ASSOCIATED RULES & REGULATIONS**

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

**AS AMENDED**

**2011**

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### **CHAPTER 202. PODIATRISTS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **Sec. 202.001. DEFINITIONS.**

(a) In this chapter:

- (1) "Board" means the Texas State Board of Podiatric Medical Examiners.
- (2) "Executive director" means the employee of the board who manages the board's day-to-day operations.
- (3) "Podiatrist" means a person who:
  - (A) is licensed under this chapter to practice podiatry and who directly or indirectly charges money or other compensation for podiatric services; or
  - (B) publicly professes or claims to be a podiatrist, foot specialist, or doctor or uses any title, degree, letter, syllable, or word that would lead the public to believe that the person is

a practitioner authorized to practice or assume the duties incident to the practice of podiatry.

(4) "Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

(b) In the laws of this state:

(1) "chiropody" means podiatry; and

(2) "chiropodist" means podiatrist.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.002. APPLICATION OF SUNSET ACT.**

The Texas State Board of Podiatric Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 1, eff. Sept. 1, 2005.*

#### **Sec. 202.003. APPLICATION OF CHAPTER.**

(a) This chapter does not apply to:

(1) a physician licensed by the Texas State Board of Medical Examiners;

(2) a surgeon of the United States Army, United States Navy, or United States Public Health Service, when performing that person's official duties; or

(3) a bona fide member of an established church in ministering or offering to minister to the sick or suffering by prayer, as set forth in the principles, tenets, or teachings of the church of which the person is a bona fide member.

(b) This chapter does not prohibit the recommendation, advertising, or sale of corrective shoes, arch supports or similar mechanical appliances, or foot remedies by a manufacturer, wholesaler, or retail dealer.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **SUBCHAPTER B. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS**

#### **Sec. 202.051. BOARD MEMBERSHIP.**

(a) The Texas State Board of Podiatric Medical Examiners consists of nine members appointed by the governor as follows:

(1) six members who are reputable practicing podiatrists who have resided in this state and have been actively engaged in the practice of podiatry for the five years preceding appointment; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 2, eff. Sept. 1, 2005.*

**Sec. 202.052. OATH OF OFFICE.**

Before entering office, a board member shall qualify for office by filing with the secretary of state the constitutional oath taken by the board member.  
*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.053. PUBLIC MEMBER ELIGIBILITY.**

A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.054. 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.  
*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 3, eff. Sept. 1, 2005.*

**Sec. 202.055. TERMS.**

Members of the board serve staggered six-year terms. At the expiration of the term of each member, the governor shall appoint a successor.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.056. 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 Section 202.051 or 202.053;
  - (2) does not maintain during service on the board the qualifications required by Section 202.051 or 202.053;
  - (3) is ineligible for membership under Section 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 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.

(c) 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.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 4, eff. Sept. 1, 2005.*

**Sec. 202.057. PER DIEM; REIMBURSEMENT.**

(a) Each board member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.

(b) A member may receive reimbursement for travel expenses, including expenses for meals, lodging, and transportation, as prescribed by the General Appropriations Act.

(c) The secretary of the board is entitled to reimbursement for the secretary's necessary expenses incurred in the performance of services for the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 5, eff. Sept. 1, 2005.*

**Sec. 202.058. OFFICERS.**

(a) The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor.

(b) At the first regular scheduled meeting of each biennium, the board shall elect from its members a vice president and secretary.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 6, eff. Sept. 1, 2005.*

**Sec. 202.059. MEETINGS.**

(a) The board shall hold regular meetings at least twice a year and special meetings as necessary. The board shall hold the meetings at times and places the board considers most convenient for applicants for license examinations.

(b) A special meeting shall be held on the call of the president or on the request of a majority of board members.

(c) If a quorum is not present on the day of a meeting, the members present may adjourn from day to day until a quorum is present.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.060. LOCATION OF OFFICES.**

The board shall maintain offices in Austin.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.061. TRAINING.**

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the programs, functions, rules, and budget of the board;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board may be entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 7, eff. Sept. 1, 2005.*

### **SUBCHAPTER C. BOARD PERSONNEL**

#### **Sec. 202.101. DIVISION OF RESPONSIBILITIES.**

The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 8, eff. Sept. 1, 2005.*

#### **Sec. 202.102. QUALIFICATIONS AND STANDARDS OF CONDUCT.**

The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.**

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all non-entry-level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.**

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER D. BOARD POWERS AND DUTIES**

**Sec. 202.151. GENERAL RULEMAKING AUTHORITY.**

The board shall adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern:

(1) its proceedings and activities;

(2) the regulation of the practice of podiatry; and

(3) the enforcement of the law regulating the practice of podiatry.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.152. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING.**

(a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.1525. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.**

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 9, eff. Sept. 1, 2005.*

**Sec. 202.153. FEES.**

(a) The board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter. The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

(b) The board may not maintain unnecessary fund balances, and fee amounts shall be established in accordance with this requirement.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.154. COMMITTEES.**

The board may appoint committees from its own membership. The duties of a committee are to:

(1) consider matters relating to the enforcement of the law regulating the practice of podiatry and the rules adopted in accordance with that law as referred to the committee; and

(2) make recommendations to the board with respect to the enforcement of those matters.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.1545. ADVISORY COMMITTEE MEMBERSHIP.**

(a) This section does not apply to a committee created under Section 202.154 exclusively composed of board members.

(b) A board member is not eligible to serve as a voting member on a task force or advisory committee that makes recommendations to the board.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 10, eff. Sept. 1, 2005.*

**Sec. 202.155. CONTRACTS WITH OTHER STATE AGENCIES.**

The board may contract with the Texas State Board of Medical Examiners or any other appropriate state agency to provide some or all of the services necessary to carry out the board's activities.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.156. BOARD RECORDS.**

(a) The board shall keep correct records of the board's proceedings and of all money received or spent by the board. The records shall be open to public inspection at all reasonable times. The records must include:

- (1) a record of proceedings relating to the examination of license applicants;
- (2) a record of proceedings relating to the issuance, renewal, or refusal of a license, including information on whether an application was rejected or granted;
- (3) the name, age, and known place of residence of each applicant for a license or license renewal;
- (4) the name and location of the college of podiatry from which each license applicant holds credentials and the time devoted by the applicant to the study and practice of podiatry; and
- (5) any other information the board desires to record.

(b) Each license and annual renewal certificate issued by the board must be numbered and recorded in a book kept by the board.

(c) Information in a record is prima facie evidence of each matter contained in the record.

(d) A certified copy of a record, under the hand and seal of the custodian of records of the board, is admissible as evidence in all courts.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.157. BOARD PROCEEDINGS.**

(a) The board is not bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but a board determination must be founded on legal evidence sufficient to sustain it.

(b) Each order of the board is prima facie valid.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.158. BOARD DUTIES REGARDING COMPLAINTS.**

(a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board;
- and
- (2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.159. ANNUAL REPORT REGARDING FUNDS.**

(a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.160. INFORMATION PROVIDED TO LICENSE HOLDERS.**

At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

*Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.*

**Sec. 202.161. POISON CONTROL CENTER INFORMATION.**

The board shall provide to license holders information regarding the services provided by poison control centers.

*Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.*

**Sec. 202.162. USE OF TECHNOLOGY.**

The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 11, eff. Sept. 1, 2005.*

**Sec. 202.163. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.**

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for

negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 11, eff. Sept. 1, 2005.*

## **SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

### **Sec. 202.201. PUBLIC INTEREST INFORMATION.**

(a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.202. COMPLAINTS.**

(a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(1) on each registration form, application, brochure, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated by the board; or

(3) in a bill for service provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The board shall make information available describing its procedures for complaint investigation and resolution.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 12, eff. Sept. 1, 2005.*

### **Sec. 202.203. COMPLAINT RECORDS.**

(a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The board shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation. The board may provide a copy of the complaint to the license holder unless providing a copy would jeopardize an investigation.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.052(a), eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 26, Sec. 13, eff. Sept. 1, 2005.*

**Sec. 202.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION.**

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of an investigator and the procedures for the board to obtain the services of an investigator, including a private investigator.

(b) The board shall:

- (1) dispose of all complaints in a timely manner; and
- (2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify each party of the projected time requirements for the complaint. The board shall notify each party to the complaint of the change in the schedule not later than the seventh day after the date the change is made.

(d) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(e) An investigator whose service is obtained by the board in an investigation under this section is immune from suit and liability for:

- (1) holding an informal conference to determine the facts of the complaint;
- (2) testifying at a hearing regarding the investigation;
- (3) issuing an opinion on or making a report about:
  - (A) a person who files a complaint under this chapter or requests the services of the board;
  - (B) a podiatrist; or
  - (C) a podiatric patient; and
- (4) investigating a complaint filed with the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1259, Sec. 1, eff. Sept. 1, 2001.*

**Sec. 202.205. PUBLIC PARTICIPATION.**

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

## SUBCHAPTER F. LICENSE REQUIREMENTS

### Sec. 202.251. LICENSE REQUIRED.

A person may not practice podiatry or hold the person out as a podiatrist unless the person is licensed under this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### Sec. 202.252. LICENSE APPLICATION.

(a) A person who desires to practice podiatry in this state shall apply in writing to the board for a license on a form prescribed by the board.

(b) The applicant shall submit any information reasonably required by the board, including evidence satisfactory to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good moral character;
- (3) has completed at least 90 semester hours of college courses acceptable at the time of completion for credit toward a bachelor's degree at The University of Texas;
- (4) is a graduate of a reputable school of podiatry or chiropody; and
- (5) has successfully completed any other course of training reasonably required by board rule relating to the safe care and treatment of patients.

(c) The applicant shall verify by affidavit the information submitted in the application.

(d) The applicant shall establish that the applicant graduated from a reputable school of podiatry or chiropody by furnishing a diploma from that school.

(e) All educational attainments or credits for evaluation under this chapter 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.

(f) For purposes of this section, a podiatry or chiropody school is reputable if:

- (1) the course of instruction consists of four terms of approximately eight months each, or the substantial equivalent; and
- (2) the school is approved by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### Sec. 202.253. GROUNDS FOR DENIAL OF LICENSE.

(a) The board may refuse to admit a person to an examination, and may refuse to issue a license to practice podiatry to a person, for:

- (1) presenting to the board a license, certificate, or diploma that was illegally or fraudulently obtained or engaging in fraud or deception in passing the examination;
- (2) being convicted of:
  - (A) a felony;
  - (B) a crime that involves moral turpitude; or
  - (C) an offense under Section 202.606;
- (3) engaging in habits of intemperance or drug addiction that in the board's opinion would endanger the health, well-being, or welfare of patients;
- (4) engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public;
- (5) directly or indirectly violating or attempting to violate this chapter or a rule

adopted under this chapter as a principal, accessory, or accomplice;

(6) using any advertising statement of a character tending to mislead or deceive the public;

(7) advertising professional superiority or the performance of professional service in a superior manner;

(8) purchasing, selling, bartering, or using or offering to purchase, sell, barter, or use a podiatry degree, license, certificate, diploma, or a transcript of a license, certificate, or diploma, in or incident to an application to the board for a license to practice podiatry;

(9) altering, with fraudulent intent, a podiatry license, certificate, diploma, or a transcript of a podiatry license, certificate, or diploma;

(10) using a podiatry license, certificate, or diploma, or a transcript of a podiatry license, certificate, or diploma, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(11) impersonating, or acting as proxy for, another person in a podiatry license examination;

(12) impersonating a license holder, or permitting another person to use the license holder's license to practice podiatry in this state, to treat or offer to treat, by any method, conditions and ailments of human feet;

(13) directly or indirectly employing a person whose license to practice podiatry has been suspended or associating in the practice of podiatry with a person whose license to practice podiatry has been suspended or who has been convicted of the unlawful practice of podiatry in this state or elsewhere;

(14) wilfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement;

(15) being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition;

(16) failing to practice podiatry in an acceptable manner consistent with public health and welfare;

(17) being removed, suspended, or disciplined in another manner by the podiatrist's peers in a professional podiatry association or society, whether local, regional, state, or national in scope, or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board determines that the action was:

(A) based on unprofessional conduct or professional incompetence likely to harm the public; and

(B) appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff; or

(18) having repeated or recurring meritorious health care liability claims filed against the podiatrist that in the board's opinion are evidence of professional incompetence likely to injure the public.

(b) In enforcing Subsection (a)(15), the board, on probable cause, shall request the affected podiatrist to submit to a mental or physical examination by a physician designated by the board. If the podiatrist refuses to submit to the examination, the board shall issue an order requiring the podiatrist to show cause why the podiatrist will not submit to the examination and shall schedule a

hearing on the order not later than the 30th day after the date notice is served on the podiatrist. The podiatrist shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the podiatrist and the podiatrist's attorney may present testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.254. EXAMINATION.**

(a) Except as provided by Section 202.261, each applicant for a license to practice podiatry in this state must pass an examination approved by the board. Each applicant shall pay to the board an examination fee at least 15 days before the date of the scheduled examination.

(b) The board may adopt and enforce rules of procedure for administering this section. A public board member may not participate in any part of the examination process for applicants for a license issued by the board that requires knowledge of the practice of podiatry.

(c) The license examination must consist of a written and practical component. The board shall determine the passing score for the examination using accepted criterion-referenced methods. The board shall have the examination validated by an independent testing professional.

(d) The examination must cover the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacology, pathology, physiology, microbiology, orthopedics, and podiatry, as related to ailments of the human foot.

(e) The board shall determine the credit to be given on the examination answers. The discretion of the board on the examination is final.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.255. EXAMINATION RESULTS.**

(a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date a licensing examination is administered under this chapter. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.256. REEXAMINATION.**

(a) An applicant who fails an examination and is refused a license based on that failure may retake the examination. The applicant must pay the regular examination fee for any reexamination.

(b) Each reexamination must cover each subject tested in Section 202.254(d).

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.257. ISSUANCE OF LICENSE.**

The board shall issue a license to each applicant who possesses the qualifications required for a license and passes the examination.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.258. REFUSAL OF ADMITTANCE TO EXAMINATION.**

An applicant who is refused admittance to examination may try the issue in a district court in Travis County.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.259. TEMPORARY LICENSE.**

(a) The board by rule may adopt a procedure for the issuance of a temporary license to an applicant other than an applicant for a provisional license under Section 202.260.

(b) Rules adopted under this section must establish:

- (1) the criteria for issuance of a temporary license; and
- (2) a maximum period during which a temporary license is valid.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.260. PROVISIONAL LICENSE.**

(a) On application, the board shall grant a provisional license to practice podiatry to an applicant who:

- (1) is licensed in good standing as a podiatrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;
- (2) has passed a national or other examination recognized by the board relating to the practice of podiatry; and
- (3) is sponsored by a person licensed under this chapter with whom the provisional license holder may practice under this section.

(b) The board may excuse an applicant for a provisional license from the requirement of Subsection (a)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. Except as provided by Subsection (e), the board shall issue a license under this chapter to the holder of a provisional license under this section if:

- (1) the provisional license holder passes the examination required by Section 202.254;
- (2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and
- (3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline to allow for the receipt of pending examination results.

(e) A provisional license holder is not required to pass a part of an examination related to the testing of clinical skills that an applicant for an original license under this chapter with substantially equivalent experience is not required to pass.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26,*

*Sec. 14, eff. Sept. 1, 2005.*

**Sec. 202.261. LIMITED LICENSE FOR PODIATRY FACULTY MEMBERS.**

(a) The board may issue a license to practice podiatry without administering the examination under Section 202.254 to a podiatrist who:

(1) at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) is licensed to practice podiatry in another state that has licensing requirements substantially equivalent to those established by this state; and

(3) otherwise satisfies the requirements of Section 202.252.

(b) For purposes of Subsection (a)(1), a course of study, training, or education is considered to be approved or accredited if it is approved or accredited by the board as constituting a reputable course of study, training, or education. In deciding whether to approve or accredit a course of study, training, or education, the board shall consider whether the course is approved or accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association or its successor organization.

(c) Except for the examination requirement, an applicant for a license under this section must comply with all application, license, and license renewal requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license issued under this section permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) A license issued under this section terminates when the faculty appointment of a podiatrist licensed under this section is terminated. This section does not:

(1) prohibit the podiatrist from applying for and obtaining a license; or

(2) affect a license obtained by the podiatrist by complying with Section 202.254 and other applicable laws relating to the practice of podiatry.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.262. DISPLAY OF LICENSE.**

(a) A person licensed under this chapter must conspicuously display both the license and an annual renewal certificate for the current year of practice at the location where the person practices.

(b) The person shall exhibit the license and renewal certificate to a board representative on the representative's official request for examination or inspection.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.263. ISSUANCE OF DUPLICATE OR AMENDED LICENSE.**

(a) If a license issued by the board is lost, destroyed, or stolen from the person to whom it was issued, the license holder shall report the fact to the board in an affidavit. The affidavit must include detailed information as to the loss, destruction, or theft, giving dates, place, and circumstances.

(b) A license holder may apply to the board for an amended license because of a lawful change in the person's name or degree designation or for any other lawful and sufficient reason. The license holder must state the reasons that the issuance of an amended license is requested.

(c) The board shall issue a duplicate or amended license on application by a license holder

and payment of a fee set by the board for the duplicate or amended license. The board may not issue a duplicate or amended license unless:

- (1) the license holder submits sufficient evidence to prove the license has been lost, destroyed, or stolen or establishes the lawful reason that an amended license should be issued; and
- (2) the board's records show a license had been issued and was in effect at the time of the loss, destruction, or theft or on the date of the request for an amended license.

(d) If an amended license is issued, the license holder shall return the original license to the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.264. INACTIVE STATUS.**

The board by rule may provide for the license of a person under this chapter to be placed on inactive status. Rules adopted under this section must include a time limit for a license to remain on inactive status.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **SUBCHAPTER G. LICENSE RENEWAL**

#### **Sec. 202.301. ANNUAL LICENSE RENEWAL.**

(a) The board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on November 1 shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(b) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(c) A person may renew the person's unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a fee equal to 1-1/2 times the required renewal fee. If a 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 a fee equal to two times the required renewal fee.

(e) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 15, eff. Sept. 1, 2005.*

#### **Sec. 202.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER.**

(a) 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 the date the person applied for renewal.

(b) The person must pay to the board a fee equal to the amount charged for renewal of the license.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 16, eff. Sept. 1, 2005.*

**Sec. 202.303. PRACTICE WITHOUT RENEWING LICENSE.**

A person who practices podiatry without an annual renewal certificate for the current year is considered to be practicing without a license and is subject to all the penalties of the practice of podiatry without a license.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.304. RENEWAL AFTER MILITARY SERVICE.**

(a) Except as provided by Subsection (c), this section applies to a podiatrist whose license has been suspended or revoked, or whose annual renewal certificate has expired, while the podiatrist has been:

(1) engaged in federal service or on active duty with:

- (A) the United States Army;
- (B) the United States Navy;
- (C) the United States Marine Corps;
- (D) the United States Coast Guard; or
- (E) the United States Air Force;

(2) called into service or training of the United States; or

(3) in training or education under the supervision of the United States before induction into military service.

(b) A podiatrist subject to this section may renew the podiatrist's license without paying a renewal fee for the expired license or passing an examination if, not later than the first anniversary of the date of the termination of service, training, or education described by Subsection (a), other than by dishonorable discharge, the podiatrist furnishes to the board an affidavit stating that the podiatrist has been so engaged and that the service, training, or education has terminated.

(c) This section does not apply to a podiatrist whose license is revoked under Section 202.502.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.305. CONTINUING EDUCATION.**

(a) The board shall develop a mandatory continuing education program. In developing its program, the board shall:

(1) establish by rule the minimum hours of continuing education required for license renewal;

(2) identify the key factors that lead to the competent performance of professional duties;

(3) develop a process to evaluate and approve continuing education courses; and

(4) develop a process to assess the participation and performance of license holders in continuing education courses to enable the board to evaluate the overall effectiveness of the program.

(b) The board may assess the continuing education needs of a license holder and require the license holder to attend continuing education courses specified by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

## **SUBCHAPTER H. PRACTICE BY LICENSE HOLDER**

### **Sec. 202.351. PODIATRY SERVICES FOR CERTAIN HEALTH ORGANIZATIONS.**

A licensed podiatrist may contract with a health organization approved by the Texas State Board of Medical Examiners under Chapter 162 to provide podiatry services for the health organization.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.352. BOARD APPROVAL OF NAMES UNDER WHICH PODIATRIST MAY PRACTICE.**

(a) The board may adopt rules establishing standards or guidelines for the name, including a trade name or assumed name, under which a podiatrist may conduct a practice in this state. In its rules, the board may also establish procedures to review and make determinations approving or disapproving a specific name submitted to the board by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the board by this section includes any form of business organization under which a podiatrist conducts a practice, including:

- (1) a sole proprietorship;
- (2) an association;
- (3) a partnership;
- (4) a professional corporation;
- (5) a clinic;
- (6) a health maintenance organization; and
- (7) a group practice with a practitioner of another branch of the healing art.

(c) A podiatrist may not practice podiatry in this state under any name, including a trade name or assumed name, unless the name is in compliance with the applicable rules adopted or determinations made under this section.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.353. MALPRACTICE CLAIM REPORTS.**

(a) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a podiatrist who practices in this state shall furnish to the board the information specified in Subsection (b) relating to:

- (1) a notice of claim letter or a complaint filed against the insured in a court, if the notice of claim letter or the complaint seeks the recovery of damages based on the insured's conduct in providing or failing to provide medical or health care services; or
- (2) a settlement of a claim or other legal action made by the insurer on behalf of the insured.

(b) The insurer shall furnish the following information not later than the 30th day after the date the insurer receives the notice of claim letter or complaint against the insured:

- (1) the name of the insured;
- (2) the number of the insured's license to practice podiatry in this state;
- (3) the insured's insurance policy number; and

(4) a copy of the notice of claim letter or complaint.

(c) If a podiatrist who practices in this state is not covered by professional liability insurance or is insured by an insurer who is not authorized to write professional liability insurance for podiatrists in this state, the affected podiatrist shall submit information to the board relating to any malpractice action brought against that podiatrist. The podiatrist shall submit the information as required by rules adopted by the board under Subsections (d)-(f).

(d) In consultation with the commissioner of insurance, the board shall adopt rules for reporting the information required under Subsections (a) and (b) and any additional information required by the board.

(e) The board shall consider other claim reports required under state or federal law in determining:

- (1) any additional information to be reported;
- (2) the form of the report; and
- (3) reasonable reporting intervals.

(f) The board may require additional information, including:

- (1) the date of a judgment, dismissal, or settlement of a malpractice action;
- (2) whether an appeal has been taken and the identity of the party appealing; and
- (3) the amount of any judgment or settlement.

(g) An insurer, an agent or employee of the insurer, a board member, or an employee or representative of the board is not liable or subject to a cause of action for an action taken as required under this section.

(h) A report or information submitted to the board under this section or the fact that a report or information has been submitted may not be offered in evidence or in any manner used in the trial of an action brought against a podiatrist based on the podiatrist's conduct in providing or failing to provide medical or health care services.

(i) The board shall review the information relating to a podiatrist against whom three or more malpractice claims have been reported during any five-year period in the same manner as if a complaint against that podiatrist had been made to the board under Subchapter E.

(j) The commissioner of insurance may impose the sanctions authorized by Chapter 82, Insurance Code, against an insurer subject to this section who fails to report as prescribed by this section.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.544, eff. Sept. 1, 2003.*

## **SUBCHAPTER I. PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS**

### **Sec. 202.401. DEFINITIONS.**

In this subchapter:

(1) "Patient" means a person who consults or is seen by a podiatrist to receive podiatric care.

(2) "Podiatric record" means a record relating to the history, diagnosis, treatment, or prognosis of a patient.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.402. SCOPE OF PRIVILEGE.**

(a) A communication that relates to or is in connection with professional services provided by a podiatrist for a patient is confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a podiatrist that are created or maintained by a podiatrist are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from confidential communications or podiatric records, other than a person listed under Section 202.405 or 202.406 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning a patient without regard to when the patient received the services of a podiatrist. *Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.403. CLAIM OF PRIVILEGE.**

(a) The privilege of confidentiality under this subchapter may be claimed by the patient or by a podiatrist acting on the patient's behalf.

(b) A podiatrist may claim the privilege of confidentiality only on behalf of the podiatrist's patient. The authority to claim the privilege is presumed in the absence of evidence to the contrary. *Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.404. EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY IN CERTAIN PROCEEDINGS.**

(a) The privilege and confidentiality requirements under this subchapter do not apply in a court or administrative proceeding if:

(1) the proceeding is brought by a patient against a podiatrist, including a malpractice proceeding, a criminal proceeding, or a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a podiatrist;

(2) a patient or a person authorized to act on the patient's behalf submits written consent to the release of confidential information, as provided by Section 202.406; or

(3) the purpose of the proceeding is to substantiate and collect on a claim for podiatric services provided to a patient.

(b) The privilege and confidentiality requirements under this subchapter do not apply in a civil litigation or administrative proceeding brought by a patient or a person authorized to act on the patient's behalf if the plaintiff is attempting to recover monetary damages for a physical or mental condition, including the patient's death. Information that is otherwise confidential under this subchapter is discoverable in a court or administrative proceeding in this state if the information is relevant to the proceeding and the court or administrative body has jurisdiction over the subject matter under the applicable rules of procedure specified for that matter.

(c) The privilege and confidentiality requirements under this subchapter do not apply in a disciplinary investigation or proceeding against a podiatrist conducted under this chapter.

(d) The privilege and confidentiality requirements under this subchapter do not apply in a criminal investigation of or criminal proceeding against a podiatrist in which the board is participating or assisting by providing certain records obtained from the podiatrist. This subsection

does not authorize the release of any confidential information to instigate or substantiate criminal charges against a patient.

(e) The board shall protect the identity of a patient whose podiatric records are examined or provided under Subsection (c) or (d), other than a patient who:

(1) is covered under Subsection (a)(1); or

(2) has submitted written consent to the release of the patient's podiatric records as provided by Section 202.406.

(f) The privilege and confidentiality requirements under this subchapter do not apply in a criminal prosecution in which the patient is a victim, witness, or defendant. Records or communications are not discoverable under this subsection until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or part of the records or communications. The court's determination does not constitute a determination as to the admissibility of the records or communications or part of the records or communications. *Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.405. OTHER EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS.**

(a) The privilege and confidentiality requirements of this subchapter do not apply to, and a podiatrist may disclose information made confidential under this subchapter to:

(1) a government agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency protects the identity of a patient whose podiatric records are examined;

(2) medical or law enforcement personnel, if the podiatrist determines that there is a probability of:

(A) imminent physical injury to the patient, the podiatrist, or another person;

or

(B) immediate mental or emotional injury to the patient;

(3) qualified personnel for a management audit, financial audit, program evaluation, or research;

(4) a person who presents the written consent of the patient or a person authorized to act on the patient's behalf for the release of confidential information, as provided by Section 202.406;

(5) an individual, corporation, or governmental entity involved in the payment or collection of fees for services provided by a podiatrist; or

(6) another podiatrist and a person under the direction of the podiatrist who is participating in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not directly or indirectly identify the patient in any report of the research, audit, or evaluation or otherwise disclose the patient's identity.

(c) Records reflecting charges and specific services provided may be disclosed only when necessary to collect fees for services provided by a podiatrist, professional association, or another entity qualified to provide or arrange for services.

(d) Records created by a state hospital, a state school, or an employee of the state hospital or state school that are otherwise confidential under this subchapter may be disclosed in an official legislative inquiry regarding the state hospital or state school. Information or records that identify a

patient or client may not be released for any purpose unless proper consent to the release is given by the patient.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.406. CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION.**

(a) Consent for the release of information made confidential under this subchapter must be made in writing and signed by:

- (1) the patient;
- (2) the patient's parent or legal guardian if the patient is a minor;
- (3) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

- (A) Subtitle B, Title 6, Health and Safety Code;
- (B) Subtitle C, D, or E, Title 7, Health and Safety Code;
- (C) Chapter XIII, Texas Probate Code;
- (D) Chapter 107, Family Code; or
- (E) another applicable law; or

(5) the patient's personal representative if the patient is deceased.

(b) The written consent required under this section must specify:

- (1) the information and records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

(c) A patient or other person authorized to consent may withdraw consent to the release of any information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal.

(d) A podiatrist shall furnish copies of podiatric records requested or a summary or narrative of the records under a written consent for release of the information as provided by this section unless the podiatrist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The podiatrist may delete confidential information about another person who has not consented to the release.

(e) The podiatrist shall furnish the information within a reasonable period of time. The patient or another person acting on the patient's behalf shall pay a reasonable fee charged by the podiatrist for furnishing the information.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.407. DISCLOSURE OF RELEASED INFORMATION.**

A person who receives information made confidential by this subchapter may disclose the information to another person only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

## **SUBCHAPTER J. PEER REVIEW**

### **Sec. 202.451. DEFINITIONS.**

In this subchapter:

(1) "Podiatric medical society or association" means a membership organization of podiatrists:

(A) incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c) of that code.

(2) "Podiatric peer review committee" means the podiatric peer review, judicial, or grievance committee of a podiatric medical society or association that is authorized to evaluate the quality of podiatry services or the competence of a podiatrist. A committee includes the members, employees, and agents of the committee.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.452. DISCLOSURE OF COMMUNICATIONS MADE TO PEER REVIEW COMMITTEE.**

(a) Written or oral communications made to a podiatric peer review committee and the records and proceedings of a peer review committee may be disclosed to:

(1) another podiatric peer review committee;

(2) an appropriate state or federal agency;

(3) a national accreditation body; or

(4) the board or the state board of registration or licensing of podiatrists in another state.

(b) The disclosure of confidential podiatric peer review committee information to the affected podiatrist that is relevant to the matter under review by the committee does not constitute a waiver of the confidentiality provisions of this subchapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.453. INFORMATION PROVIDED TO AFFECTED PODIATRIST.**

A podiatric peer review committee that takes action that could result in censure or suspension, restriction, limitation, or revocation of a license by the board or a denial of a podiatrist's membership or privileges in a health care entity shall provide the affected podiatrist a written copy of the committee's recommendation and a copy of the final decision, including a statement of the basis for the decision.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.454. CONFIDENTIALITY REQUIREMENTS.**

(a) Except as otherwise provided by this subchapter, the proceedings and records of a podiatric peer review committee are confidential and all communications made to a podiatric peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings, records, or communications of a podiatric peer review committee are relevant to an anticompetitive action or to an action brought

under federal civil rights laws, the proceedings, records, or communications are not considered to be confidential to the extent the proceedings, records, or communications are determined to be relevant to that action.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.455. PRIVILEGE OF CONFIDENTIALITY; WAIVER.**

(a) The records or determinations of a podiatric peer review committee or communications made to a committee are not subject to subpoena or discovery and are not admissible as evidence in a civil or administrative proceeding unless disclosure is required or authorized by law. A committee may in writing waive the privilege of confidentiality.

(b) The evidentiary privilege under this subchapter may be invoked by any person in a civil or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the chairman, vice chairman, or secretary of the affected podiatric peer review committee.

(c) If a podiatric peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action filed as a result of participating in peer review is permitted to use confidential information in the defendant's defense or in a claim or suit under Section 202.457, the plaintiff in that proceeding also may disclose the records or determinations of a peer review committee or communications made to a peer review committee to rebut the defendant.

(d) A person who seeks access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a podiatric peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation does not waive a privilege established under this subchapter.

(f) The disclosure of documents or information under a subpoena issued by the board does not constitute a waiver of the confidentiality privilege associated with a podiatric peer review committee proceeding.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.456. IMMUNITY.**

(a) Except for an action involving fraud, conspiracy, or malice, a podiatric peer review committee is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the committee's duties in:

- (1) investigating a disagreement or complaint;
- (2) holding a hearing to determine facts; or
- (3) making an evaluation, recommendation, decision, or award involving:

(A) a podiatrist who is a member of the podiatric medical society or association; or

(B) another podiatrist, podiatric patient, or third party who requests the services of the committee.

(b) A person, including a health care entity or podiatric peer review committee, that participates in podiatric peer review activity or furnishes records, information, or assistance to a podiatric peer review committee or to the board is immune from civil liability arising from those acts if the person acted in good faith and without malice.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.457. CLAIMS FOR DEFENSE COSTS.**

A podiatric peer review committee, a person participating in peer review, or another entity named as a defendant in a civil action filed as a result of the defendant's participation in peer review may file a counterclaim in the pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous or to have been brought in bad faith.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER K. DISCIPLINARY ACTIONS AND PROCEDURES**

**Sec. 202.501. BOARD DISCIPLINARY POWERS; ADMINISTRATIVE PROCEDURE.**

(a) The board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) Proceedings for the suspension or revocation of a license under this section are subject to Chapter 2001, Government Code.

(d) A person whose license to practice podiatry has been revoked or suspended by order of the board may appeal the action to a district court in Travis County. The board's decision may not be enjoined or stayed except on application to the district court after notice to the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.5015. CERTAIN CONDUCT CONSTITUTING CHAPTER VIOLATION.**

A license holder who engages in conduct described by Section 202.253 violates this chapter.  
*Added by Acts 2001, 77th Leg., ch. 1259, Sec. 2, eff. Sept. 1, 2001.*

**Sec. 202.502. REVOCATION AND SUSPENSION OF LICENSE FOR DRUG-RELATED FELONY CONVICTION.**

(a) The board shall suspend a person's license after an administrative hearing conducted in accordance with Chapter 2001, Government Code, in which the board determines that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code.

(b) On the person's final conviction, the board shall revoke the person's license.

(c) The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissuance of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.503. PROBATION; HEARING.**

(a) The board, on majority vote, may probate an order revoking or suspending a podiatrist's license conditioned on the podiatrist conforming to any order or rule the board adopts as the condition of probation. The board, at the time of probation, shall set the term of the probationary period.

(b) At any time while the podiatrist remains on probation, the board may hold a hearing to determine whether the podiatrist has violated the conditions of the probation. On a board determination that the conditions of the probation have been violated, the board may rescind the probation and enforce the board's original action in revoking or suspending the podiatrist's license.

(c) The president of the board shall call the hearing under Subsection (b) to rescind the probation. The president shall order the issuance of notice setting the time and place for the hearing and containing the charges or complaints against the podiatrist. The notice shall be served on the podiatrist or the podiatrist's counsel and on any person complaining about the podiatrist or that person's counsel at least 10 days before the date set for the hearing. If personal service is impossible or cannot be effected, the provisions for service instead of personal service under Chapter 2001, Government Code, apply.

(d) The podiatrist and any person complaining about the podiatrist may appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the board. The board may also issue subpoenas on its own motion. The subpoenas of the board may be enforced through any district court with jurisdiction and venue in the county where the hearing is held.

(e) The board shall determine the charges on their merits. The order revoking or rescinding the probation is not subject to review or appeal.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.504. REISSUANCE OF LICENSE.**

(a) On application, the board may reissue a license to practice podiatry to a person whose license has been revoked or suspended.

(b) A person whose license has been revoked may not apply for a reissued license before the first anniversary of the date of the revocation. The person shall apply for the license in the manner and form required by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.505. REEXAMINATION IF LICENSE SUSPENDED OR REVOKED.**

The board may refuse to reinstate a license or to issue a new license until a podiatrist has passed the regular license examination if the board suspended or revoked the license for:

- (1) failure to satisfy continuing education requirements under Section 202.305; or
- (2) nonpayment of the annual license renewal fee.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.506. APPLICATION TO CERTAIN DRUG OFFENSES.**

A person convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code, is not eligible for:

- (1) probation of a license suspension or revocation under Section 202.503; or
- (2) reissuance of a license under Section 202.504.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.507. SUBPOENA AUTHORITY.**

(a) The board may request and, if necessary, compel by subpoena:

- (1) the attendance or examination under oath of witnesses; and
- (2) the production of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the board, through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held. If the court finds that good cause existed for the issuance of the subpoena, the court shall order compliance with the subpoena. Failure to obey the court order is punishable by the court as contempt.

(c) Failure to comply with a subpoena constitutes grounds for disciplinary action against the person, including a facility, by the board.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.508. INFORMAL PROCEEDINGS.**

(a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of:
  - (A) a representative of the office of the attorney general or the board's legal counsel to advise the board or the board's employees; and
  - (B) a public member of the board at an informal settlement conference.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 17, eff. Sept. 1, 2005.*

**Sec. 202.5085. REFUND.**

(a) Subject to Subsection (b), the board may order a person licensed under this chapter to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 18, eff. Sept. 1, 2005.*

**Sec. 202.509. DISCLOSURE OF INVESTIGATIVE INFORMATION.**

(a) 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.

(b) Subject to any other privilege or restriction established by law, not later than the 30th day after the date the board receives a written request from a license holder, or the license holder's attorney, who is the subject of a formal complaint, the board shall provide the license holder with access to all information in the board's possession that the board intends to offer into evidence at the contested case hearing on the complaint. The board may provide access to the information to the license holder after the 30th day after the date the board receives a request only on a showing of good cause.

(c) The board is not required under Subsection (b) to provide access to the board's investigative reports or memoranda, release the identity of a complainant who will not testify at the hearing, or release information that is an attorney's work product or protected by the attorney-client privilege or another privilege recognized by the Texas Rules of Civil Procedure or Texas Rules of Evidence. The furnishing of information under Subsection (b) does not constitute a waiver of any privilege or confidentiality provision under law.

(d) Investigative information in the board's possession that relates to a disciplinary action regarding a license holder may be disclosed to:

(1) a licensing agency regulating the practice of podiatry in another state or country in which the license holder is also licensed or has applied for a license; or

(2) a peer review committee reviewing a license holder's application for privileges or the license holder's qualifications with regard to retaining the privileges.

(e) The board shall report to the appropriate law enforcement agency information obtained by the board in the course of an investigation that indicates that a crime may have been committed. The board shall cooperate and assist a law enforcement agency conducting a criminal investigation of a license holder by providing relevant information to the agency. Information provided to a law enforcement agency by the board is confidential and may not be disclosed except as necessary to conduct the investigation.

(f) The board shall provide information to a health care entity on the written request of the entity concerning:

(1) a complaint filed against a license holder that was resolved after an investigation by the board or resolved by an agreed settlement; and

(2) the basis for and status of an active investigation concerning a license holder.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

#### **Sec. 202.510. TEMPORARY SUSPENSION OF 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 continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended by a disciplinary panel under this section 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 a disciplinary panel of the board is

scheduled for the earliest possible date after the 10th day after the notice of hearing.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing before the disciplinary panel described by Subsection (c), if the disciplinary panel affirms the temporary suspension of the license holder's license, the board shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and Section 202.508 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension.

(f) If the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension, a board representative shall initiate a disciplinary procedure under Section 202.501 as soon as practicable.

(g) If, after the hearing described by Subsection (c), 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 the temporary suspension of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension of a license holder's license include 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.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 18, eff. Sept. 1, 2005.*

## **SUBCHAPTER L. ADMINISTRATIVE PENALTY**

### **Sec. 202.551. IMPOSITION OF PENALTY.**

The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

### **Sec. 202.552. AMOUNT OF PENALTY.**

(a) The amount of an administrative penalty may not exceed \$5,000. 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:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) 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 violations;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 19, eff. Sept. 1, 2005.*

**Sec. 202.553. REPORT AND NOTICE OF VIOLATION AND PENALTY.**

(a) The executive director, on determining that a violation has occurred, may issue to the board a report that states the facts on which the determination is based and the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.554. PENALTY TO BE PAID OR HEARING REQUESTED.**

(a) Not later than the 20th day after the date the person receives the notice under Section 202.553, the person may:

- (1) accept in writing the executive director's determination and recommended administrative penalty; or
- (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.555. HEARING.**

(a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall:

- (1) set a hearing; and
- (2) give notice of the hearing to the person.

(b) A hearing set under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.556. DECISION BY BOARD.**

(a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation has occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.  
*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.**

(a) Not later than the 30th day after the date the board's order is final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Not later than the 30th day after the date the order is final, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.558. COLLECTION OF PENALTY.**

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.559. DETERMINATION BY COURT.**

(a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.560. REMITTANCE OF PENALTY AND INTEREST.**

(a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.561. ADMINISTRATIVE PROCEDURE.**

A proceeding under this subchapter is subject to Chapter 2001, Government Code.  
*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS**

**Sec. 202.601. INJUNCTION.**

(a) In addition to any other action, proceeding, or remedy authorized by law, the board may institute an action in its own name to enjoin the violation of a law regulating the practice of podiatry or a rule adopted under this chapter. The court may grant a temporary injunction in the action.

(b) The attorney general or a district or county attorney shall represent the board in an action under this section.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.6015. CEASE AND DESIST ORDER.**

(a) If it appears to the board that a person who is not licensed under this chapter is violating or has violated this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of podiatry, the board after providing to the person notice and the opportunity for a hearing may issue a cease and desist order prohibiting the conduct described in the notice.

(b) If the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board may:

(1) issue a cease and desist order; and

(2) refer the violation to the attorney general for further action.

(c) If the person requests a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) A hearing under this section is subject to Chapter 2001, Government Code.

(e) Notwithstanding Section 202.551, the board may impose an administrative penalty under Subchapter L against a person who violates an order issued under this section.

(f) The board shall adopt rules necessary to implement this section.

*Added by Acts 2005, 79th Leg., ch. 26, Sec. 20, eff. Sept. 1, 2005.*

**Sec. 202.602. MONITORING AND INSPECTION OF LICENSE HOLDER.**

(a) The board by rule shall develop a system to monitor a podiatrist's compliance with this chapter. The system must include:

- (1) procedures for determining whether a podiatrist is in compliance with an order issued by the board; and
- (2) method of identifying and monitoring each podiatrist who represents a risk to the public.

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

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

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 26, Sec. 21, eff. Sept. 1, 2005.*

**Sec. 202.603. PROSECUTION OF VIOLATION.**

The board shall take action to ensure the prosecution of each person who violates this chapter and may incur reasonably necessary related expenses.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.604. CIVIL PENALTY: USE OF TRADE NAME; INJUNCTION.**

(a) A person who violates Section 202.352 or a rule adopted or a determination made by the board under that section is subject to a civil penalty of not less than \$50 or more than \$500 for each day of violation.

(b) If it appears that a person has violated or is violating Section 202.352 or a rule adopted or determination made by the board under that section, the board may institute a civil action in district court for:

- (1) injunctive relief to restrain the person from continuing the violation;
- (2) the assessment and recovery of a civil penalty under Subsection (a); or
- (3) both injunctive relief and the civil penalty.

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

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.605. GENERAL CRIMINAL PENALTY: PRACTICING WITHOUT LICENSE.**

(a) A person commits an offense if the person professes to be a podiatrist or practices or assumes the duties incident to the practice of podiatry without holding a license to practice podiatry.

(b) An offense under this section is punishable by:

- (1) a fine of not less than \$50 or more than \$500;
- (2) confinement in the county jail for not less than 30 days or more than six months;

or

- (3) both the fine and confinement.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*

**Sec. 202.606. CRIMINAL PENALTY: AMPUTATION OF FOOT.**

(a) A podiatrist commits an offense if the podiatrist amputates a human foot.

(b) An offense under this section is punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for not less than 30 days or more than six months;

or

(3) both the fine and confinement.

*Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.*