

T EXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

PHYSICAL ADDRESS: 333 GUADALUPE, TOWER II, SUITE 320, AUSTIN, TEXAS 78701

MAILING ADDRESS: P.O. BOX 12216, AUSTIN, TEXAS 78711

NATIONAL TOLL FREE COMPLAINT HOTLINE: 1-800-821-3205

VOICE: 512-305-7000 FAX: 512-305-7003 WEB: WWW.TSBPME.TEXAS.GOV



HEMANT MAKAN
EXECUTIVE DIRECTOR / INVESTIGATOR

MEMORANDUM

TO: All Interested Parties

FROM: Agency Staff of the Texas State Board of Podiatric Medical Examiners

DATE: Friday, August 6, 2010; Wednesday, August 25, 2010; Monday, October 11, 2010; Wednesday, March 21, 2012

RE: Podiatry Scope of Practice – Resource Information

The following information is made available (Texas Government Code §2001.007) by agency staff of the Texas State Board of Podiatric Medical Examiners (TSBPME) for guidance (resource). Unless otherwise specifically cited, this information is not intended to supersede the authority of any other regulatory board or entity that may have jurisdiction on these issues. Additionally, this information is not intended to be construed as a "Rule" under the Administrative Procedure Act or otherwise. Furthermore, this information is not a formal legal opinion nor advisory opinion, which this Board does not issue.

NOTE: BLUE FONT INDICATES HYPERLINK TO SOURCE/REFERENCE DOCUMENTATION

Generally, regarding a podiatrist's scope of practice in Texas, as of July 30, 2010, the Texas Supreme Court had made a final decision on the podiatry scope of practice litigation involving the TSBPME/TPMA/TMA/TOA.

Podiatry scope of practice ultimately is a matter for final determination by the Texas Legislature. The 82nd Legislative Session began in January 2011. By the conclusion of the 82nd Texas Legislative Session in May 2011, HB1980/Laubenberg & SB 1264/Uresti died in Committee. As no action was taken by the 82nd Texas Legislature on those identical/companion bills, podiatry scope of practice determinations continue to be made in reference to and in accordance with the March/May 2008 Texas 3rd Court of Appeals Opinions (upheld by the Texas Supreme Court on July 30, 2010) and the statutory definition of "Podiatry" found in Texas Occupations Code §202.001(a)(4).

► **A podiatrist's scope of practice in Texas is defined, at least, in three parts:**

First, Texas Occupations Code (Statute) §202.001(a)(4) "Definitions" provides that: "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."

Second, Texas Administrative Code, Title 22, Part 18 (Rules) §375.1(2) provided: ~~"Foot" The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes."~~ **NOTE:** On July 30, 2010, pursuant to actions of the Texas Supreme Court, the Board's above definition of "Foot" was declared to be **INVALID** in accordance with the **May 23, 2008 Texas 3rd Court of Appeals Opinion** and **August 20, 2010 Texas 3rd Court of Appeals Mandate**.

Third, Texas Health & Safety Code Subchapter E relating to Medical Staff Membership & Privileges (§241.101 et al.) supports that treatment by a podiatrist at the hospital/surgical facility level are within the scope of practice for podiatric medicine in the State of Texas (by "any system or method") as long as the podiatrist is qualified and credentialed to do so and has hospital/surgical privileges for the same, for performance of the procedure at the hospital/surgical level as cleared by medical staff.

Texas Health & Safety Code §241.101(g) "Hospital Authority Concerning Medical Staff" provides that: "A hospital's bylaw requirements for staff privileges may require a [physician], podiatrist, [or dentist] to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested."

A podiatrist who is not trained in performance of the procedures for which the podiatrist seeks hospital privileges is not authorized to perform those procedures as unqualified practitioners are to refrain from attempting procedures that are not within the individual podiatrist's capability.

Texas Health & Safety Code §241.102(a) "Authorizations and Restrictions in Relation to Physicians and Podiatrists" provides that: "This chapter does not authorize a [physician or] podiatrist to perform [medical or] podiatric acts that are beyond the scope of the respective license held."

The TSBPME recommends to all credentialing committees that they review a podiatrist's documented training prior to granting privileges. **Whether or not privileges are granted is a matter for local control.**

► **Additional considerations:**

The practice of podiatry and podiatric medicine involves a podiatrist utilizing procedures that are within the scope of an individual podiatrist's competency, training and experience.

A list of approved techniques or procedures for podiatrists is not found in the Board's statutes or rules. All podiatrists in Texas have graduated from a 4 year podiatric medical college, and others have completed at least one (1) year of a residency up to three (3) years. (Note: Residency requirements became effective at 12:01 a.m. on July 1, 1995).

Some podiatrists have furthered their credentials by completing fellowships and earning a certification or accreditation through various private “specialty/certifying” boards for surgery, etc. The TSBPME does not maintain a list of credentialing or specialty/certifying entities. That information can be obtained through the Texas Podiatric Medical Association (TPMA) at 512-494-1123 or at <http://www.txpma.org>. The TPMA has published a hospital manual for further assistance. In addition, the medical staff at any entity, hospital, surgi-center, etc. giving clinical privileges further determines a podiatrist’s scope by their individual credentials/qualifications. They can NOT expand the scope as determined by law. Credentialing is a matter for local determination.

Texas Statewide Strategic Planning Philosophy provides, in part, that: "... Decisions affecting individual Texans, in most instances, are best made by those individuals, their families, and the local government closest to their communities ... Competition is the greatest incentive for achievement and excellence. It inspires ingenuity and requires individuals to set their sights high. And just as competition inspires excellence, a sense of personal responsibility drives individual citizens to do more for their future and the future of those they love ..."

In recognition of proper practice for public safety, any podiatrist shall provide adequate and appropriate services consistent with best practices and community standards. A podiatrist shall maintain objectivity and shall respect each individual's dignity, and shall not engage in any action that may cause injury and shall always act with integrity in providing services.

A podiatrist shall recognize the limitations on the individual’s ability and shall not offer services outside the individual’s scope of practice, qualifications/training, and shall not use techniques that exceed the individual’s professional competence. A podiatrist shall not claim, directly or by implication, to possess professional qualifications or affiliations that the podiatrist does not in fact possess.

Board Rule 375.3(a) "General" provides: "The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective to the podiatric profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life."

Further podiatric medical training information can be obtained from the [Council on Podiatric Medical Education](#) (CPME). The CPME states: "The Council on Podiatric Medical Education is an autonomous accrediting agency for podiatric medical education. Deriving its authority from the House of Delegates of the American Podiatric Medical Association, the Council is empowered to develop and adopt standards and policies as necessary for the implementation of all aspects of its accreditation, approval, and recognition purview." Additional podiatric medical credentialing information can be obtained from the [American College of Foot and Ankle Surgeons](#) (ACFAS).

To reiterate, with regard to all credentialing/privileging issues, that is a matter for **LOCAL CONTROL** between the podiatrist and the facility in accordance, in part, with Texas Health & Safety Code Subchapter E relating to Medical Staff Membership & Privileges §241.101 et al. Privileges are granted by hospital credentialing committees upon consideration of a podiatrist’s

individual training, experience, certifications and qualifications. For any/all requested privileges, the podiatrist should demonstrate training and proficiency (e.g. via surgical logs or proctoring).

Each medical facility determines, locally, and individually, whether the podiatrist seeking credentials has the necessary skill, education, and training to perform specific procedures.

The Board is not authorized to order any hospital/facility to grant privileges to a podiatrist. Podiatrists experiencing credentialing/privileging issues may contact the Texas Podiatric Medical Association (512-494-1123) for further legal/trade assistance.

► **Texas Supreme Court & Texas 3rd Court of Appeals litigation update:**

On Friday, July 30, 2010, the Texas Supreme Court issued a final decision in the following matter: **"Case No. 08-0485 Texas Supreme Court – Texas State Board of Podiatric Medical Examiners, Texas Podiatric Medical Association and Bruce A. Scudday, DPM v. Texas Orthopaedic Association, Texas Medical Association, and Andrew M. Kant, MD."**

On Friday June 18, 2010 the Texas Supreme Court denied the Board's and TPMA's Petitions For Review in regards to the May 23, 2008 Texas 3rd Court of Appeals Opinion invalidating the definition of "Foot." On Thursday June 24, 2010 the TPMA filed a Motion For Rehearing. On Friday, July 30, 2010 the Texas Supreme Court rendered a decision denying TPMA's Motion For Rehearing. On **Friday, August 20, 2010 the Texas 3rd Court of Appeals Mandate** was issued. Again, the **May 23, 2008 Texas 3rd Court of Appeals Opinion** has ruled the definition of "Foot" as being invalid. The following is highlighted:

- 1) The staff of the Board understands the Court's reasoning in this matter. The Texas 3rd Court of Appeals appears to acknowledge that the traditional practice of podiatry may include treatment of the ankle.
- 2) The Court points out that the Board's "Foot" rule was too broad: "...We disagree with the Board and the Association [TPMA]. All of their arguments are couched on the premise that the Rule merely authorizes podiatrists to treat the foot and the ankle and that the Rule is, therefore, consistent with the scope of podiatric medicine. However, there is no language in the Rule limiting the foot to that portion of the body that is at or below the ankle. On the contrary, the terms of the Rule authorize podiatrists to treat parts of the body that are well above the ankle..."
- 3) The Court's Opinion has said: "Because there is no language limiting the permissible area of treatment for these soft tissues, the Rule authorizes podiatrists to treat these anatomical features wherever they may be located in the body and to treat 'any disease, disorder, physical injury, deformity, or ailment' of these features because they have been defined as being part of the foot. See Tex. Occ. Code Ann. § 202.001(a)(4). Moreover, because the Occupations Code allows podiatrists to treat the foot 'by any system or method,' the Rule effectively authorizes podiatrists to treat these body parts by utilizing procedures that are outside the scope of their training.⁴ See id. §202.001(a)(4); see also id. §202.254 (specifying that to obtain license to practice podiatry, applicant must pass examination covering ailments of the foot) (emphasis added). As a result, the Rule authorizes podiatrists to treat parts of the body outside the traditional scope of podiatry without satisfying the requirements of the Medical Practice Act. See id. §§ 155.001-152 (detailing requirements for obtaining license to practice medicine). This authorization exceeds the limited

exemption given to podiatrists and would constitute the unauthorized practice of medicine. See *id.* §§ 151.052(a)(5), 155.001.⁵” (Footnotes “4” & “5” in the original Opinion.)

4) In Footnote 2, the Court declined to do what the Medical Doctors had requested of the Court: “The appellants [the Medical Doctors] also ask us to issue a declaration that ‘the lawful practice of podiatry in Texas is confined to treatment of the foot.’ Given our resolution of this case, it is unnecessary and would be advisory for us to opine as to the entire scope of the practice of podiatry in Texas.”

5) In Footnote 3, the Court states: “We note that some medical definitions of the ‘foot’ exclude the ankle. See, e.g., Black’s Medical Dictionary 211 (39th ed. 1999) (defining foot as ‘that portion of the lower limb situated below the ankle joint’); American Heritage Stedman’s Medical Dictionary 312 (2002) (defining foot as ‘The lower extremity of the vertebrate leg that is in direct contact with the ground in standing or walking’).”

6) In Footnote 4, the Court states: “Although there was extensive testimony and evidence presented during trial showing that treating the ankle was within the scope of podiatry, no evidence was introduced showing that treating parts of the body found within the leg were within the scope of podiatry.”

7) In Footnote 7, the Court states: “The statutory authority currently in place limits podiatrists to the treatment of ‘the foot.’ While it may be difficult to define that term for purposes of treatment, whatever the term means, it is clear that ‘the foot’ does not include the full portion of the body included within the definition in the Rule. Compelling arguments might be made as to whether — from a medical standpoint — it is reasonable to allow a practitioner treating the foot to consider and treat other anatomical systems that interact with and affect the foot. **This is a debate to be had at the legislature.**”

The Texas 3rd Court of Appeals concluded its discussion by saying: “...As discussed previously, the Rule authorizes treatment of body parts that are above the ankle. For all of the reasons given, we conclude that the Board exceeded its authority when it promulgated the Rule and that the Rule is invalid.”

► **Questions & Answers:**

1. With regard to questions involving wound care for venous stasis ulcerations of the lower extremity, the Board makes the following observations:

Treatment of most venous stasis ulcers of the ankle would appear to be permissible, subject to qualifications/credentialing. Treatment of ulcers above the ankle, however, would be outside the scope of practice/licensure for podiatry. When the wound is above the ankle it is not directly “a treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method” as, for example, a gastrocnemius recession would be needed to treat an equinus deformity.

In some wound care centers throughout the state, there are team/multi-disciplinary scenarios where podiatrists, medical doctors, nurses, physical therapists and other trained professionals collaborate on treatment of leg wounds (& beyond), but this is not by virtue of limited

podiatry licensure, but rather by local medical staff credentialing/standards/controls and delegation by a medical doctor (MD/DO; i.e. “physician”) of such treatments, as authorized by Texas Occupations Code §157.001 "General Authority of Physician to Delegate." That law provides: "(a) A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician: (1) the act: (A) can be properly and safely performed by the person to whom the medical act is delegated; (B) is performed in its customary manner; and (C) is not in violation of any other statute; and (2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine. (b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts. (c) The board [Texas Medical Board] may determine whether: (1) an act constitutes the practice of medicine, not inconsistent with this chapter; and (2) a medical act may be properly or safely delegated by physicians." Be advised, "physician" means a “medical doctor” or “doctor of osteopathic medicine” (MD/DO) licensed by the Texas Medical Board.

To that end, the TSBPME does **NOT** make determinations on whether or not a physician can delegate non-foot/ankle wound care to a podiatrist, as Texas Occupations Code §157.001 "General Authority of Physician to Delegate" makes that the business of the **Texas Medical Board**. A person who provides treatment under a physician’s delegation does so under the physician's (Texas Medical Board) medical license. Of course, a podiatrist who acts under a physician’s delegation can **NOT** bill for that service as a "physician.”

2. Do podiatrists perform surgical and non-surgical procedures at or below the ankle as may be necessary to treat an ailment of the foot?

Qualified podiatrists, for example, perform Achilles tendon lengthening (a soft tissue procedure on the leg) that may be medically necessary to treat a child’s clubfoot or a contracture of the Achilles tendon to relieve pressure on an ulceration. Similarly a gastrocnemius recession (a soft tissue procedure) performed by a qualified podiatrist may be necessary on its own or in combination with other procedures to adequately treat a disorder of the foot. These are examples of how a surgical procedure on the leg is utilized by a qualified podiatrist to treat an ailment of the foot.

3. Does a podiatrist operate on the bones of the ankle to treat a condition of the foot?

Qualified podiatrists perform surgical procedures on the bones of the ankle (medial or lateral malleoli) to treat a disorder of the foot. A talar dome lesion (foot bone) often must be accessed by performing an osteotomy (bone cut) of the malleoli to allow access and visualization of the surgical site.

4. Do podiatrists treat ankle fractures?

Qualified podiatrists treat ankle fractures that involve dislocation of the foot at the ankle (talus dislocation). Qualified podiatrists perform surgical procedures including applying plates and screws (internal fixation) or external fixation techniques to stabilize the foot and

ankle in order to treat an ailment of the foot. This may require inserting pins or wires through the tibia and fibula in the leg to treat an ailment of the foot.

END OF TSBPME AGENCY STAFF RESOURCE INFORMATION MEMORANDUM

The Board does not assume any responsibility for any unauthorized modifications to or alterations of this document.

Published: 08/06/2010

Last Updated/Revised: 08/25/2010 (with 08/20/2010 Texas 3rd COA “Mandate”)
10/11/2010 (with 10/08/2010 Texas Register “Foot” repeal)
03/21/2012 (with additional “Q&A”)

► **Podiatric & Medical private trade association links and contact information:**

- **Texas Podiatric Medical Association (TPMA)**
918 Congress Avenue; Suite #200; Austin, Texas 78701
Phone: (512)-494-1123; Fax: (512)-494-1129
- **Texas Medical Association (TMA)**
401 West 15th Street; Austin, Texas 78701
Phone: (512)-370-1300; Fax: (512)-370-1630
- **Texas Orthopaedic Association (TOA)**
401 West 15th Street; Suite #820; Austin, Texas 78701
Phone: (512)-370-1505; Fax (512)-370-1515

► **This TSBPME Memorandum is not endorsed by the TPMA, TMA or TOA.**

► **This TSBPME Memorandum is for resource/guidance (Texas Government Code §2001.007).**