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2016 GUIDELINES FOR: **BOARD INVESTIGATIONS** **&** **CONSEQUENCES OF CRIMINAL CONVICTIONS** **&** **RELATED USE OF PENALTY SCHEDULE**

[Effective May 16, 2007]

[Updated April 13, 2016]

PURPOSE

The Sunset Advisory Commission, during the 79th Legislative Session (2005), required that the Texas State Board of Podiatric Medical Examiners (TSBPME) implement rules to be compliant with the provisions of Texas Occupations Code Chapter 53 relating to “Consequences of Criminal Conviction” and the use of a “Standardized Penalty Schedule” as referenced in Texas Occupations Code §202.552(b)(c) “Amount of Penalty.”

Texas Occupations Code §202.1525 “Rules on Consequences of Criminal Conviction” provides that: “(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.”

Texas Occupations Code §202.551 “Imposition of Penalty” provides that: “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.”

Texas Occupations Code §202.552 “Amount of Penalty” provides that: “(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).”

TEXAS OCCUAPTIONS CODE CHAPTER 53 PROVISIONS

The entirety of Texas Occupations Code Chapter 53 “Consequences of Criminal Conviction” can be found at:

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.53.htm>

MISSION

The purpose of the TSBPME is to protect the health, safety and welfare of the citizens of the State of Texas through regulation of Podiatric Physicians licensed by the Board and investigation of complaints against Podiatric Physicians and persons practicing Podiatric Medicine without a Texas license. It is our goal to ensure that Texas consumers are effectively and efficiently served by high quality professionals and businesses by setting clean standards and maintaining compliance.

The Texas State Board of Podiatric Medical Examiners has the authority to proceed against a Podiatric Physician for violations of its statues and rules concerning the practice of Podiatric Medicine, Texas Occupations Code, §202.501 Board Disciplinary Powers; Administrative Procedure.

POLICY

It is the policy of the Texas State Board of Podiatric Medical Examiners to ensure that complaint investigations of applicants for a license (respondents) and holders of a license (respondents) under the Board’s jurisdiction and cases of (final) criminal conviction adjudications that relate to the duties of the practice of Podiatric Medicine are addressed consistently utilizing due process.

This policy is intended to: (1) promote consistency in the exercise of sound discretion by Board members and Board staff in licensure and disciplinary matters; (2) provide guidance for Board members and Board staff for the resolution of potentially contested matters; and (3) provide guidance as to the types of conduct that constitute violations of the Podiatric Medical Practice Act or Board rules.

This policy shall not preclude the applicability of any other State or Federal Law not referenced within nor shall this policy preclude the Board from reasonably investigating and taking action on a respondent who poses a risk to public safety on a case-by-case review while accounting for litigating, aggravating and mitigating factors subject to Texas Government Code Chapter 2001 (Administrative Procedure; Informal Consent Hearings; Judicial Review; State Office of Administrative Hearings;

Alternative Dispute Resolution/Mediation; District Court) as followed pursuant to the Office of the Attorney General's Administrative Law Handbook.

The Board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Board statutes and rules.

The Board welcomes recommendations of Administrative Law Judges as to the sanctions to be imposed, but the Board is not bound by such recommendations.

Sanctions should be consistent with sanctions imposed in other similar cases and should reflect the Board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the Board. The appropriate sanction is not a proper finding of fact or conclusion of law.

This policy shall be construed and applied so as to preserve Board member discretion in the imposition of sanctions and remedial measures pursuant to Board statute and rule provisions related to methods of discipline and administrative penalties. This policy shall be further construed and applied so as to be consistent with the Board's statutes and rules, and shall be limited to the extent as otherwise prescribed by Board statute and Board rule.

GENERAL STATEMENT – ACCESS TO DPS & FBI CRIMINAL HISTORY RECORDS

Pursuant to Texas Government Code §411.087 and §411.122, and Code of Criminal Procedure §60.061, the Board obtains from the Texas Department of Public Safety (DPS) criminal history record information maintained by the DPS/FBI that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency. All applicants for licensure are subject to (fingerprint) criminal background checks.

Unless otherwise specifically provided in law, evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from licensure. Consideration of such information shall be in conformity with applicable federal and state statutes, and the guidelines contained within this policy.

The Board will determine, on a case-by-case basis, whether an individual about whom such information has been obtained is qualified for licensure based on factors provided in Texas Occupations Code Chapter 53.

If the Board uses the criminal history record information in order to make a licensure decision or take a Board action, the Board shall give the affected respondent notice of the use of the information and an opportunity to correct any inaccuracies in the information. The Board, in its discretion, shall specify the time period for correction when it notifies the affected respondent of the utilization of such information.

The Board is authorized to submit fingerprints and receive FBI identification records under 28 C.F.R. §50.12. Therefore, in the procurement of FBI fingerprint cards from applicants for a license, the Board

notifies the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The Board shall provide the respondents the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The Board also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34.

Board notification of DPS & FBI Fingerprint Criminal History Background Check procedures to applicants and license holders can be found primarily here on the Board's website:

<http://www.tsbpme.texas.gov/fingerprinting.htm>

1. For Criminal History Evaluation Letters (Prospective License Applicants) & Self-Reporting (License Holders): <http://www.tsbpme.texas.gov/complaint.htm>
2. For all other License Holders & License Applicants:
<http://www.tsbpme.texas.gov/licensing permanent.htm>
<http://www.tsbpme.texas.gov/licensing temporary.htm>
<http://www.tsbpme.texas.gov/licensing provisional.htm>
<http://www.tsbpme.texas.gov/licensing license renewals.htm>

If the Board receives the criminal history record information during the pendency of any criminal proceeding in which a conviction is not final, the Board reserves the right to make a licensure decision or take a Board action before the conviction is final, if failure to do so would be impracticable or detrimental to the public. In determining whether a conviction is final for the purposes of these policies and procedures, the Board shall exercise its discretion in accordance with all relevant federal and state statutes.

Board Rule §376.27(f) "Investigations of Complaints Filed with the Board – Criminal Investigations" provides that: "(1) The Board shall cooperate with and assist any law enforcement, criminal justice or government agency in the investigation of criminal allegations or information obtained by the Board in the course of an investigation that indicates that a crime may have been committed. Criminal information in the possession of the Board is confidential and may be disclosed only as necessary to conduct the investigation. (2) The Board shall conduct criminal background checks of applicants for licensure and as necessary, for licensees under investigation, through the Texas Department of Public Safety and the Federal Bureau of Investigation as authorized by law. In pursuing an investigation for licensure, the Board may also contact any other law enforcement agencies to obtain information as necessary to fulfill legislative mandates. (3) Criminal background checks include, but are not limited to, fingerprint checks, conviction histories, arrest histories, name histories, personal identifier histories, review of court/judicial documents and histories of involvement with law enforcement or any other criminal justice agencies."

CONFIDENTIALITY PROVISIONS & COOPERATION WITH LAW ENFORCEMENT

Texas Occupations Code §202.509 "Disclosure of Investigative Information" provides, in part, that: "(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. (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. (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.”

Storage & Destruction of Criminal History Record Information. Such information obtained for its authorized/intended purpose is stored in its respective paper application and/or investigation file by subject name and number. Paper application and/or investigation files may also be electronically scanned as necessary to Board computers/servers as necessary during the investigation of a background check in order to retain necessary information for administrative process purposes. Board computers/servers are password protected and physically secured in the Board’s office located at the William P. Hobby Jr. State Office Building (333 Guadalupe Street; Ste. #2-320; Austin, TX 78701). Physical file cabinets are also kept under lock and key in a secured area. Destruction of Board physical files follows our Records Retention Schedule approved by the Texas State Library & Archives Commission. When physical files are to be destroyed, they are first itemized/logged, then placed into a marked storage container located in a secured area and then finally destroyed by the State’s approved vendor Austin Task Incorporated. Records destruction certificates are maintained with the Records Retention Schedule. Board staff undertake all measures necessary to guard against unauthorized access to its physical files and computers/servers. All TSBPME employees are in a “Position of Trust”.

USE OF TECHNOLOGY FOR PUBLIC ACCESS TO BOARD PROCESS

It is the policy (i.e. “Use of Technology”) of the Texas State Board of Podiatric Medical Examiners to ensure that the public is able to interact with the Board on the Internet. Any person may use the Board’s website to send electronic mail (e-mail) to Board staff for any reason to include questions, concerns, or information requests. Citizens may download a complaint form from the Board’s website to register a complaint against a Podiatric Physician; issues related to the practice of Podiatric Medicine or can submit a complaint as an e-mail. The public may review a variety of information on the website, including [License Verifications and Disciplinary Actions \(Board Actions\)](#).

All Board Actions are reported to the National Practitioner Data Bank ([NPDB](#)) as required by Federal Law (in part, Title IV of Public Law 99-660; the Health Care Quality Improvement Act of 1986, as amended 42 USC Sec. 11101 01/26/98). Board Actions, as a service to the citizens of Texas (Open Record), are published on the Board’s website pursuant to Texas Occupations Code §202.201 “Public Interest Information” which provides: “(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." All TSBPME investigations resulting in sustained violations of the Podiatric Medical Practice Act of Texas, the Board Rules and any other applicable law are adjudicated via a Board Order/Agreed Order. Those Orders are approved and executed at a Public Meeting, at which time they become a Public/Open Record.

GUIDELINES

Board Rule §376.31(g) "Consequences of Background and Criminal History Checks" provides that: "The Board shall utilize guidelines for determining the reasons why a particular crime is related to the practice of podiatry and other factors that affect the decision as to whether the past criminal history would render the individual ineligible for licensure."

Criminal convictions and complaint investigations subject to the Board's jurisdiction can involve criminal judicial processes subject to violations of the Texas Penal Code; any other jurisdictional Texas Statute (e.g. Occupations Code, Health & Safety Code, Government Code, Family Code,

Human Resource Code, Labor Code, etc.); any other law of the 50 states; the United States Code and the Code of Federal Regulations (Social Security Act; Medicare; Medicaid). The Board's primary enforcement authority exists in Texas Occupations Code Chapter 202 "Podiatric Medical Practice Act of Texas," specifically Texas Occupations Code §202.253 "Ground for Denial of License," Texas Occupations Code §202.501 "Board Disciplinary Powers; Administrative Procedure" and the Board Rules (Chapter 375; Chapter 376) [Title 22, Part 18, Texas Administrative Code]. If a matter involves a Podiatric Physician or the practice of Podiatric Medicine, then the Board has a jurisdictional responsibility to regulate.

In the course of executing investigations, the Board interacts with local/county/state/national podiatric medical associations, the Texas Legislature, the Texas Health Professions Council, local/state/national hospitals and clinics, medical licensing agencies, other medical professional associations and health care entities, various municipal/county/state/federal law enforcement agencies such as the Texas Department of Public Safety, the Federal Bureau of Investigation, the United States Drug Enforcement Administration, the United States Postal Service – Office of Inspector General, the United States Department of Health and Human Services – Office of Inspector General and the Texas Office of the Attorney General – Medicaid Fraud Control Unit.

Unless specifically cited in statute, receipt of criminal conviction information MAY indicate that a respondent has acted in a manner detrimental to the public health and welfare, as stated in the Podiatric Medical Practice Act of Texas (Texas Occupations Code Chapter 202) and the Texas State Board of Podiatric Medical Examiners Rules governing the practice of Podiatric Medicine, §375.3 "General" (22 TAC 18).

Board Rule §375.3 "General" provides that: "(a) The health and safety of patients shall be the first consideration of the Podiatric Physician. The principal objective to the Podiatric profession is to render service to humanity. A Podiatric Physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The Podiatric Physician shall administer to

patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A Podiatric Physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life. (b) A licensed Podiatric Physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs. A Podiatric Physician shall not abandon a patient he has undertaken to treat. He may discontinue treatment after reasonable notice has been given to the patient by the Podiatric Physician of his intention to discontinue treatment and the patient has had a reasonable time to secure the services of another Podiatric Physician or all podiatric medical services actually begun have been completed and there is no contract or agreement to provide further treatment.”

Board Rule §375.15 “Relationships with Other Practitioners” provides that: “A Podiatric Physician shall not aid an unethical practitioner or engage in any subterfuge with any person, business, or organization. He shall expose any illegal, unethical, or dishonest conduct of other practitioners and cooperate with those invested with the responsibility of enforcement of the law and these rules of conduct.”

Board Rule §375.29 “Compliance with Orders, Subpoenas and Investigations” provides that: “(a) A licensee shall comply with all Board orders and subpoenas. (b) A licensee shall cooperate fully and promptly in any Board investigation of the licensee. Cooperation shall include but not be limited to the following: (1) responding to any notice of violation, notice of investigation, or other Board correspondence, and (2) providing documentation requested pursuant to an investigation or notice of violation that the licensee possesses, control, or to which the licensee has access. (c) Any licensee who does not comply with any provision of this rule shall at the discretion of the Board be subject to a penalty of \$100 per day not to exceed \$5000.”

Podiatric Physicians are required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated Rules of the Board (22 Texas Administrative Code § 371.1, et. seq).

Texas Occupations Code §202.253(a)(5) provides that: “the Board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.”

Texas Occupations Code §202.501(a) provides that: “the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the Board.” Board proceedings against respondents are subject to Texas Government Code Chapter 2001.

Respondents may ultimately appeal Board actions 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.

Texas Occupations Code §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.

Board Rule §376.3(a) provides that: “any Podiatric Physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice Podiatric Medicine.”

In consideration of the aforementioned responsive to Texas Occupations Code Chapter 53, the Board may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

Relation of Crime to Licensure – Duties & Responsibility

Board Rule §376.31 "Consequences of Background and Criminal History Checks" provides in part that: "(a) This section sets out the factors and criteria on the eligibility of persons with criminal convictions, deferred adjudications, state or federal guilty pleas on indictments and/or informations, and background information to obtain a license to practice podiatry or those already licensed who renew. The Board may refuse to issue or renew a license to any individual that has been convicted of a felony, received a deferred sentence, or engaged in conduct unacceptable to the Board. (b) The practice of podiatry involves dealing with patients, their families and friends, and the public in a variety of clinical and private practice settings. The podiatrist deals with individuals who are physically, emotionally and financially vulnerable. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as relevant to an individual's fitness to practice podiatry."

Podiatric Physicians, along with Medical Doctors and Doctors of Osteopathic Medicine (MD's/DO's) are the only medical practitioners in Texas that are allowed full hospital surgical privileges and have full prescriptive writing authority (as well as Dentists & Veterinarians). An iniquitous Podiatric Physician has the potential to cause their patients serious, permanent harm and even death.

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

The Board has published a “Podiatry Scope of Practice – Resource Information” document on it’s website at: <http://www.tsbpme.texas.gov/qa.htm#q1>

Relevant Criminal Acts – Responsive to Texas Occupations Code Chapter 53

These guidelines reflect the most common or well-known categories of crimes, and their relation to the practice of Podiatric Medicine. Any number or type of criminal convictions reviewed/investigated by the Board can fit within the categories of crimes described below. However, these guidelines are not intended to be an exclusive listing, i.e. they do not prohibit the Board from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed within this policy, the Board may find that a conviction not described herein renders a person

unfit to hold a license. In addition to the specific crimes listed below, multiple violations of any criminal statute should always be reviewed for threat assessment to public safety. Multiple violations may reflect a pattern of behavior that renders the applicant unfit for a license.

The following “Criminal Acts” (misdemeanor & felony) are subject to Board investigation and action as aforementioned and as found within, but not limited to, Texas Penal Code:

1. **P.C. TITLE 4** “INCHOATE OFFENSES”
2. **P.C. TITLE 5** “OFFENSES AGAINST THE PERSON”
3. **P.C. TITLE 6** “OFFENSES AGAINST THE FAMILY”
4. **P.C. TITLE 7** “OFFENSES AGAINST PROPERTY”
5. **P.C. TITLE 8** “OFFENSES AGAINST PUBLIC ADMINISTRATION”
6. **P.C. TITLE 9** “OFFENSES AGAINST PUBLIC ORDER AND DECENCY”
7. **P.C. TITLE 10** “OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS”
8. **P.C. TITLE 11** “ORGANIZED CRIME”

Additional “Criminal Acts” also subject to Texas Occupations Code Chapter 202 “Podiatric Medical Practice Act of Texas” and Board Rule Chapter 375 “Conduct and Scope of Practice” and Board Rule Chapter 376 “Violations and Penalties” actions, include, but are not limited to:

1. Practicing Podiatric Medicine without a license or without the annual renewal certificate
2. Practicing Podiatric Medicine beyond the scope of practice of the “foot and ankle” which constitutes the practice of “Medicine” without a license as defined by Texas Occupations Code §155.001 “License Required” which provides that: “A person may not practice Medicine in this state unless the person holds a license issued under this subtitle.” This is the licensed field of practice of Medical Doctors and Doctors of Osteopathic Medicine as regulated by the Texas Medical Board.
3. Criminal amputation of the human “foot” as cited in Texas Occupations Code §202.606.
4. Deceptive business practices under the Texas Penal Code.
5. Medicare, Medicaid or Private Insurance Fraud.
6. Failure to pay Child Support
7. Drug related convictions under Chapter 481 or 483, or Section 485.033 of the Texas Health and Safety Code; delivery, possession, manufacture, or

use of, or dispensing or prescribing a controlled substance, dangerous drug, or narcotic.

8. Misdemeanor or Felony offenses under the Texas Penal Code involving, but not limited to:
 - (A) murder;
 - (B) assault;
 - (C) burglary;
 - (D) robbery;
 - (E) theft;
 - (F) sexual assault (to include “Sexual Misconduct” violations as provided in Board Rule §375.33);
 - (G) injury to a child;
 - (H) injury to an elderly person;
 - (I) child abuse or neglect;
 - (J) tampering with a governmental record;
 - (K) forgery;
 - (L) perjury;
 - (M) failure to report abuse;
 - (N) bribery;
 - (O) harassment;
 - (P) solicitation of professional employment under Texas Penal Code §38.12(d) or Texas Occupations Code Chapter 102; or
 - (Q) mail fraud;

Other misdemeanors or felonies not listed herein which indicate an inability or tendency for the person to be unable to perform as a licensee, or to be unfit for licensure, serve as grounds for investigation and discipline by the Board; and promote the intent of the Podiatric Medical Practice Act of Texas, the Board rules and Texas Occupations Code Chapter 53.

Relevant Board Actions – Responsive to Texas Occupations Code Chapter 202

Texas Occupations Code §202.253 “GROUNDS FOR DENIAL OF LICENSE” provides that:

- (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) willfully 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.

STATUTE & RULES "TO KNOW" REFERENCE FOR RESPONDENTS

Although respondents are subject to all applicable state and federal laws, and the Board statute and rules, the following is a reference for individuals to study which may render cause for a Board investigation or Board action. "Ignorance of the law" is not a defense to administrative or criminal prosecution; however, through proper proactive education, respondents can prevent the commission of crimes and violations. License holders and applicants for a license are provided with these references (handouts) during the pre-examination presentation on the day of administration of the Board's Jurisprudence Examination.

The Board has published a "Board Statute & Rules Regulatory Hi-Lites" document on its website at: <http://www.tsbpme.texas.gov/qa.htm#q6> and the same at: <http://www.tsbpme.texas.gov/licensing.htm>

USE OF PENALTY SCHEDULE

Board Rule §376.5 "Administrative Penalties" provides for the "Complaint/Penalty Schedule" which can be found here (& below) in the Texas Register:

<http://texreg.sos.state.tx.us/fids/200603324-1.html>

As referenced above, the Board's primary enforcement authority exists in Texas Occupations Code Section 202.253 (and related authority within Texas Occupations Code Chapter 53). The Board investigates every case on a "case-by-case" basis within the totality/context of circumstances and threat to public safety, or lack thereof, while accounting for litigating, aggravating and mitigating factors subject to Texas Government Code Chapter 2001 (Administrative Procedure) as followed pursuant to the Office of the Attorney General's Administrative Law Handbook. A respondent's case history and prior involvement with the Board is taken into consideration in addition to the Board's experience with the respondent and the victim's. The Board's Investigative Committee discusses and ultimately determines the enforcement of penalties before, during and after Informal Hearings to make necessary adjustments as supported by evidence and case evolution. Provisions within Texas Occupations Code Chapter 202 allow for Board "opinion," "discretion" and "determination" when it comes to violations and enforcement, and the Board executes judicious discussions and review of the administration of penalties that also includes the respondent's ability to contest any Board amounts (whether initially set by Staff or the Committee). Other penalties such as fines for

failure to obtain Continuing Medical Education (CME) are more technical and are issued by Board staff at \$100.00 per lack of CME hour up to the maximum penalty allowed by law (\$5,000.00). The Investigative Committee discusses cases and reviews the Complaint/Penalty Schedule to map where the respondent is so that penalties can be determined to satisfy the particular case-by-case issue (Board Rule §376.11).

Board Rule §376.11 “Board Discretion Regarding Penalties” provides that: “The Board shall have complete discretion to impose penalties as are reasonable and fair and in accordance with due process in light of all the evidence adduced in each case, the difficulty or proof of elements of the case, the credibility of evidence or witnesses for the State or the licensee, the harm caused by the violation, and other similar considerations, including a comparison with the penalties previously assessed in similar cases and circumstances.”

In its office in Austin, TX, the Board maintains the following manuals as further reference for case investigation consistency: 1) Texas Criminal Law & Motor Vehicle Handbook; 2) Reference Tool for Criminal Cases; 3) Sexual Misconduct Investigations; 4) Board Orders –

Disciplinary Actions; 4) Statute & Rules; 5) Investigative Manuals; 6) Podiatric Medical Reviewer Handbook and 7) Personnel Manual. The Board consults with Legal Counsel at the Office of the Attorney General to assist in the direction of its complaint investigations to account for other factors (i.e Case Law; Court Opinions; Etc.) not referenced herein.

The Board’s “Investigative Flow-Chart &Tree” follows below to evidence the complaint process.

INQUIRIES

Inquiries regarding the content of this policy should be directed to Hemant Makan, Executive Director, at (512)-475-3301 or by e-mail at Hemant.Makan@tsbpme.texas.gov.

Hemant Makan; Executive Director; (512)-475-3301; Hemant.Makan@tsbpme.texas.gov

[INSERT TSBPME COMPLAINT/PENALTY SCHEDULE]

[INSERT TSBPME INVESTIGATIVE TREE]

Figure: 22 TAC §376.5(c)

Complaint/Penalty Schedule

Category of Complaint	Death	Substance Abuse	Fraud	Negligence	Advertising	Fees	Records	Inappropriate Physician Behavior	Impaired Physician	Office Inspection
Priority/Severity Level										
I	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>	
II		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
III		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
IV		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						
V		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						

Severity Levels

Level 1 Violations that have, had, or may have an adverse impact on the health or safety of a patient to include serious harm, permanent injury, or death. May result in license revocation.

Level 2 Violations that have, had, or may have an adverse impact on the health or safety of a patient but less serious than Level 1 and may result in revocation/suspension of license.

Level 3 Violations that have, had, or may have an impact on the safety or health of a patient. Violations may be repeated and/or flagrant and may result in probated suspension.

Level 4 Violations that have, had, or may have more than minor significance, but if left uncorrected or unrecognized could lead to more serious circumstances resulting in possible reprimand and/or administrative penalties.

Level 5 Violations that are non-serious infractions of the Act or Rules that may result in an informal reprimand or letter of reprimand.

* It should be noted that the matrix is to be used only as a guide. Due to the varying nature of complaints and supporting documentation, penalties assessed may be placed in different severity levels.

TEXAS STATE BOARD of
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TSBPME INVESTIGATIVE TREE

