



TPMA E-NEWS

May 2009

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TPMA
918 Congress Avenue
Suite 200
Austin, TX 78701
(512) 494-1123 phone
(512) 494-1129 fax
www.txpma.org



Executive Director's Report

Don Canada
don@txpma.org

Communication with the TPMA membership on issues that are timely and pertinent is a very important charge for what we do at the State office. Since we decreased our TPMA Journals to twice a year, it seems like much of what we have done this past year has been done by blast emails. And sometimes, we sit on the information that is shared with the Board of Directors, but gets lost with the membership.

I decided there had to be a better way to keep you informed, so this is the inaugural issue of our E-news that will come out monthly. This will allow us to deal with several issues at once and gives us a format to easily communicate with you, the member.

This will be a no-frills version of our TPMA Journal, and without many graphics, pictures or advertising. During this first issue, we are dealing with updates on litigation, legislation, and radiology training for podiatric assistants (pay close attention to this, as it will help you in your practice and changes how the registration for podiatric medical assistants works in the future). And we will always try to provide pertinent and timely information from the TPMA President and/or TPMA Board members that have something to share.

I hope you like this new format, and I would be interested in hearing from you with comments or suggestions (don@txpma.org).



President's Message

Robert Taylor, DPM, FACFAS
bobbyerl@msn.com

TSBPME UPDATE AND STATUS

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I want to give you an update on events of the past week regarding the TSPME hearing for the new rule as well as the status of "negotiations" between myself and the TMA/TOA point person.

As you recall from my last update, the TSBPME "Board" hearing was held in Austin on Friday, February 27th. The TMA, TOA, Patient's First Coalition and their legal representatives spoke against the new rule. They essentially stated and restated what they have said since 2001, and that is the rule says Foot which is not the ankle, and if you want to change it, go to the legislature. The TPMA and APMA spoke for the new rule. Again, officially representing our association were

myself, Judge Tom Phillips, Mark Hanna, and Dr. Ross Taubman APMA President, and Don Canada was present. We felt that we were very effective stating from a State and National standpoint that the new proposed rule broke no new ground and simply represented what the contemporary practice of Podiatric Medicine and Surgery has been in Texas and the Country for a very long time. Our legal team did a good job articulating that the Board does have the authority to make these rule changes, and this particular rule is in harmony with the appellate court's decision.

Following that Rules Committee meeting, the entire Board met on Monday, March 30th. On the agenda for the meeting was rescinding the old rule and voting to adopt the new rule. Representing the TPMA again were myself, Judge Phillips, and Mark Hanna (Don Canada was present also, and in fact was there all day for us). I will also say that prior to this meeting, we heard rumors that the Board was being asked, pressured, strongly influenced (all were used as descriptions to me) not vote on the new rule and to possibly wait until the session was over. We did some checking into that and were initially told those were just rumors and in fact might be considered inappropriate if true. We made contact with individual members on the Board just to make sure we articulated our position and that was that the rule was a good rule, and state how important it was they vote to adopt it at the meeting.

Well, upon arriving to the meeting I personally could tell "something was up". Very long story short, they weren't rumors. After comments from TPMA and TOA/TMA the Board went into Executive Session and we had to leave the room. They remained in Executive session until lunch time, and then reconvened afterwards. After much deliberation on wording, they voted for the Rules Committee to continue to work on the discussed changes to bring back to the next meeting.

Now fast forward to our Supreme Court case. We had asked the court for an extension in view of the Board meeting and possibly voting on a new rule, which would possibly have rendered the case moot. The court granted that extension, but wanted an update following the Board meeting. TPMA, TSBME, and the TMA all provided status updates to the court.

Since it will be some time until the TSBPME meets again on July 6th; and then has to go thru the process of posting, public comments, etcetera, So, we press on full steam ahead preparing the Supreme Court case.

As far as negotiations are concerned, my personal negotiations may be over based on some correspondence I received as soon as I touched down in Dallas Monday afternoon following the Board Meeting. I have and will continue to remain open to "true", serious negotiations and we would welcome a mediated settlement in this case that would allow podiatrists who have the training, education and experience to perform procedures for which they have credentials.

On a final note again, I must ask that we show discretion with information relating to this issue. This is my effort to keep you in the loop during these very trying times. Some of the discussion will be best kept to "live" interaction but should you have any pressing questions or concerns however, please do not hesitate contacting me.



Legislative Update

Mark Hanna, P. C., J.D.

mhanna@markjhanna.com

REGARDING BILLS OF INTEREST

1) Parity – HB 1570 by Thompson

Provides that a preferred provider contract between an insurer and a podiatrist must provide that the methodology used to compute the amount of payment or reimbursement for services or procedures covered by the contract is the same as the methodology used to compute the amount of payment or reimbursement when the same services are provided by an MD/DO.

Status – Passed the House. Pending referral to Committee in the Senate.

2) Medicaid – SB 1 by Ogden

Has passed both the House and the Senate and is pending in Conference Committee. All optional services are covered. The Senate version includes some fee increases for providers.

3) Credentialing – SB 779 by Watson

Provides for expedited credentialing for health care providers under a managed care plan.

Status – Passed the Senate. Referred to House Insurance Committee.

4) Out-of-Network Providers – SB 586 by Carona

Provides that an insurer may not terminate the contract or otherwise penalize a preferred provider solely because the provider's patients use out-of-network providers for medical or health care services.

Status – Passed the Senate. Referred to House Insurance Committee.

5) Insurance – HB 806 by Gallego

Mandates insurance coverage for certain prosthetic devices, orthotic devices, and related services.

Status – Passed both House and Senate.

6) Taxes –

Numerous bills have been introduced which will decrease the current margin tax which applies to most Texas businesses.

Status – All proposals are still pending in Committee.

7) Scope of Practice –

To date no bills have been introduced which effect the DPM's scope of practice.

SCOPE OF PRACTICE LITIGATION SUMMARY AND UPDATE

On December 15, 2008, the TSBPME voted to propose changes to its administrative rules. These proposed changes include the complete repeal of 22 Texas Administrative Code §375.1(2), the definition of the word "foot," and additional revisions which are as follows:

(c) A licensed podiatric physician may treat that portion of the body at or below the ankle by any system or method.

(d) The intent of §375.3(c) is to clarify that treatment may include surgical and non-surgical procedures performed on soft tissue structures distal to the tibial tuberosity that affect the foot and ankle.

(e) The intent of §375.3(c) is to clarify that this includes fractures that extend into the ankle joint.

(f) Surgical treatment of the ankle and their governing and related structures distal to the tibial tuberosity by a podiatric physician shall be performed only in a licensed acute care hospital or a licensed ambulatory surgical center.

(g) A licensed podiatric physician may perform all surgical procedures at a hospital or surgical facility that are within the scope of practice for podiatric medicine in the State of Texas as long as the podiatric physician is credentialed by the hospital or surgical facility to do so. The Texas State Board of Podiatric Medical Examiners recommends individual privileging commensurate with an individual practitioner's level of experience, training or board certification/board eligibility.

(h) In recognition of proper practice for public safety, a podiatric physician shall provide adequate and appropriate services consistent with best medical practices, community standards and the law applicable to the practice of podiatric medicine, including the rules of the Board. The podiatric physician shall maintain objectivity, shall respect each individual's dignity and shall always act with integrity in providing services.

(i) The podiatric physician shall recognize his or her individual limitations of ability and shall not offer services outside the scope of practice, qualifications and training or use techniques that exceed individual professional competence. The podiatric physician shall not make any claim, directly or by implication, of possessing professional qualifications or affiliations that have not been attained or that are not currently possessed.

The TSBPME held a public hearing to receive comments on the proposed rules on February 27, 2009. It was anticipated that the Board would vote to finally adopt the proposed rule changes, including the repeal of 22 Texas Administrative Code §375.1(2), at its next meeting on March 30, 2009.

Accordingly, in anticipation of the Board's adoption of the new rules, on January 9, 2009, TPMA, TSBPME, and Dr. Scudday filed Petitioners' Joint Motion to Abate The Appeal Or, In the Alternative, Extend Time To File Their Briefs on the Merits, whereby they asked the Supreme Court to abate the appeal and suspend briefing until May 15, 2009, which would give the TSBPME the opportunity to finalize/adopt the proposed rules which were published in the *Texas Register* on January 2, 2009. In the alternative, if the Court finds that the abatement of the appeal is not warranted, Petitioners requested that the deadline for filing their briefs on the merits be extended from January 21, 2009 to March 23, 2009.

On January 20, 2009, the Texas Supreme Court granted Petitioners' Joint Motion To Abate The Appeal. The Case was removed from the Court's active docket until March 23, 2009, by which time the parties must file a status report or motion to dismiss.

On March 30, 2009, the Board met to consider/adopt the proposed rule changes, including the repeal of 22 Texas Administrative Code §375.1(2). However, rather than voting to adopt the proposed rules, the Board opted to postpone taking any action at this time and instead will invite comments from stakeholders regarding appropriate new rules to replace the definition of "foot." The Board will meet on July 6, 2009 to discuss the comments it receives from stakeholders and possibly propose new rules.

On March 23, 2009 the TPMA, TSBPME, and Dr. Scudday filed status reports with the Texas Supreme Court advising the Court regarding the Board's pending rulemaking efforts and advising the Court that the parties will submit briefs on the merits as the Court may so require, or in the alternative, are also ready to delay the briefing schedule to await possible Board action on rule changes. TMA and TOA also filed a status report with the Texas Supreme Court requesting that Petitioners be required to either file briefs on the merits or voluntarily dismiss their petitions for review.

Until such time as the Supreme Court enters a ruling regarding the current abatement and a future briefing schedule, it is impossible to predict the timetable for the pending appeal process. If the Court acts quickly and requests briefs in May, 2009, the anticipated timetable for the appeal process before the Texas Supreme Court is as follows:

- (1) TPMA, TSBPME, and Dr. Scudday will submit briefs on the merits to the Supreme Court in May, 2009.
- (2) TMA/TOA's reply briefs will be due in June, 2009.
- (3) TPMA's brief in reply to TMA/TOA's briefs will be due in July, 2009.
- (4) All briefs will be reviewed by a staff attorney who will make a written recommendation to the Supreme Court to either grant or deny the Petitions For Review. This should occur in September, 2009.
- (5) It is likely that the Supreme Court will not grant or deny the Petitions For Review until October, 2009.
- (6) If the Petitions For Review are granted by the Supreme Court, oral argument will likely be scheduled in January or February, 2010.

If, however, the TSBPME finally adopts new rules which define the DPM's scope of practice in Texas and repeal the current definition of "foot," this would likely render the pending appeal moot. If this occurs, TPMA will file a Motion to Dismiss the Appeal with the request that the Supreme Court enter a per curiam notation that the appeal is moot and that the Court neither approves or disapproves the Court of Appeals Decision.

With regard to TPMA's appeal to the Texas Supreme Court, TPMA has retained the former Chief Justice of the Texas Supreme Court (Judge Tom Phillips of Baker Botts, LLP) to represent TPMA in the appeal as lead appellate counsel. Judge Phillips believes that the legal issues are such that we have an opportunity to prevail on appeal and he has verified that the current Rule stays in place pending a final determination by the Texas Supreme Court.

Finally, if contacted by the media about the Court of Appeals opinion or TPMA's Petition for Review, please refer all inquiries to TPMA President Robert P. Taylor, DPM at (972) 712-4161.

For additional information regarding legislation introduced during the Eighty-First Texas Legislature, contact Mark J. Hanna, Legal/Legislative Counsel, 900 Congress Avenue, Suite 250, Austin, Texas 78701; telephone: (512) 477-6200; facsimile: (512) 477-1188; email: mhanna@markjhanna.com.



Radiology Update

Joe Martin, DPM

jmartin@swmail.sw.org

RADIOLOGY TRAINING UPDATE FOR PODIATRIC MEDICAL ASSISTANTS

As I read the letter from DSHS March 2009 to all podiatry assistants, it appears that the radiology training TPMA provides (Title 25 140.522e) to our podiatry assistants does not require them to register with DSHS. DSHS registration in this situation would be voluntary. Podiatry assistants completing TPMA training are however required to register with the Texas State Board of Podiatric Medical Examiners (TSBPME).

Registry with DSHS carries with it the requirement for 6 hours of CME every 2 years. A renewal fee is then required to maintain this registry with DSHS. A lapse of renewal requires retaking the training in order to reinstate registry with DSHS.

Podiatry Assistants who have completed DSHS approved training are required to register with TSBPME. Currently TSBPME does not have a CME requirement, but does require certain standards of practice and a yearly renewal fee. There does not appear to be any obvious advantage to being on the DSHS registry, other than convenient documentation of training for multiple office practices, and the advantage of CME in maintaining quality of care.

Regular inspection of facilities and personnel is carried out by DSHS through the Radiation Control Program. These inspections may be on site or through paper audits to demonstrate documentation of equipment, training of personnel, and personal radiation monitoring devices. According to information from TSBPME and DSHS, documentation of registration with TSBPME of all assistants taking x-rays in the podiatry office is required.

In the past, TPMA has facilitated the registration of podiatry assistants with DSHS. Since registration with DSHS following the TPMA provided training is voluntary, and since registration with TSBPME is required, a more useful change in strategy might be to facilitate registration with TSBPME and leave voluntary registration with DSHS up to the individual podiatrist office.

RECOMMENDATION:

Unless other information comes to light to alter this situation, TPMA recommends podiatrists have their podiatric assistants who handle radiologic procedures to register with the TSBPME instead of the DSHS. Moving forward, TPMA will register each participant with TSBPME who successfully completes his or her TPMA radiology training course and TPMA will pay the original registration fee. The individual office will be responsible for renewals of this registration on an annual basis with TSBPME.

Young Members Committee

The Young Members' Program was established in August 1997, with the help of a generous grant from Podiatry Insurance Company of America (PICA). The grant places PICA in the position of founding partner of the APMA's Young Members' Program (YMP).

YMP exists to serve the needs and interests of APMA young members (students, residents, fellows, postgraduate, and associate members) and to encourage membership.

The YMP is developing many new programs and publications to keep young members informed and involved in current issues. The Young Members' Committee (YMC) recognizes that students, residents, and new practitioners have unique concerns deserving special attention.

Young Members' Committee (YMC) focuses on the needs and interests of members with five years or less of experience in the practice of podiatric medicine, as well as resident and student members. The Committee also leads recruiting efforts of young practitioners into APMA and assists state components with development of CME programming for their young members.

At the recent House of Delegates meeting in Washington, D.C. the YMC made a presentation requesting that each component society consider adding a position on the Board of Directors that was specifically for a young member (designated as five years or less in practice). They gave several reasons how the young members could help with programming for CME meetings, and even help with development of a young member's track at the meetings.

This concept was first introduced about two years ago in Washington, DC and at the time, we had members already on our TPMA Board that were in their first five years of practice. So, at that time we elected to do nothing. Since that time, several states have instituted changes to their bylaws that allow for a designated position on the Board of Directors for a young member.

At our recent Board meeting, TPMA voted to develop a Young Members Committee and at the Annual Meeting, we will consider a bylaws change that would put one designated Young Member on the TPMA Board as a voting member. In addition, we will add a position on the CME committee for a young member to help with programs that will specifically benefit the young practitioner. These are very good steps forward to provide benefits and integrate the members with less than five years in practice into the mainstream of TPMA.

CME Committee Update

Damien Dauphinee, DPM, FACFAS, CWS

Dauphinee@completefootandanklecare.com

The CME Committee has continued working diligently for our attendees creating meaningful, top notch medical education programming that will enhance your practice and keep you on the cutting edge of podiatric medicine and surgery. The Committee has benefited from a reorganization of the conference goals set forth for our four main meetings: the Dallas County Podiatric Medical Conference, The TPMA Spring Symposium, The Annual TPMA Business Meeting and the Southwest Foot and Ankle Conference. The International Meeting has been put on hiatus for now.

The upcoming Annual Business Meeting Academic Program offered on Friday June 26th, 2009 will offer 6 hours of CME focusing on one of the most common maladies we see every day: Heel Pain. We will explore the many etiologies for heel pain including neurogenic, inflammatory, and biomechanical causes. We will also offer an update on surgical intervention for heel pain and an update on marine related foot injuries apropos for our beach side surroundings on South Padre Island. This FREE meeting for members will compliment the TPMA Annual Business Meeting on Saturday June 27th, 2009.

For September 13th-16th, 2009, the CME Committee has worked diligently to finalize the offerings for the Southwest Foot and Ankle Conference 2009. The Friday opening schedule will offer attendees a tremendous opportunity to learn conflict management strategies from renowned expert Richard Voyles, Ph.D. Dr. Voyles is the President of Conflict Resolution Academy, LLC a service company providing professional and personal development skills. He has traveled the world, training people in conflict management and mediation skills. Your TPMA Executive Board and young leaders were invited to the Leadership Conference last year and spent a day with Dr. Voyles. We all enjoyed the presentation and learned from Rick's perspective and expertise. The academic course offerings will include well known experts in the field of sports medicine including world renowned arthroscopist Richard Ferkel, MD from Los Angeles who works with professional and Olympic level athletes. We will explore the many opportunities we have to make an impact on our athletic patients from the weekend warrior to the elite athlete. We will be offering a 2nd track on Saturday highlighting modern wound management and practicing to the standard of care put on by leaders in the industry. The CME Committee is committed to offer ethics credits at every meeting and will have an hour of ethics training available on Sunday along with the wrap up of our Sports Medicine Track.

For our Podiatric Medical Assistants we have a tremendous opportunity to update their skills with lectures provided Friday afternoon on podiatric medicine and an opportunity to work with Dr. Voyles on Saturday for an intensive conflict management workshop. Let's face it, our assistants can make us look good or hold us back based on the training we provide. Give your assistants the knowledge base they need to make you shine and send them to the Southwest Foot and Ankle Conference 2009!

TPMA – Podiatry Institute Spring Seminar a Big Success

This year's Spring Seminar, hosted jointly by the Texas Podiatric Medical Association and the Podiatry Institute was a great success. Thanks to membership support of the meeting, the registration numbers reached almost 250 DPM's with an additional 30 Radiology Assistants.

The seminar, which took place at the Marriott Rivercenter in San Antonio, Texas, started off strong with a special Codingline Workshop given by Harry Goldsmith, DPM, followed by a welcome reception with cocktails and appetizers. A special thank you goes out to our reception sponsor, Bako Pathology, for supporting TPMA at the Spring Seminar.

Highlights include a PICA risk management session, pediatric topics, rearfoot and ankle tracks, as well as presentations by the American Academy of Podiatric Practice Management. Overall we received many supportive comments from our members about the content and presenters of each session. We also received great feedback from the vendors who came out in full force with many useful products for podiatric offices. Thank you to all who attended and supported this year's Spring Seminar. See you next year!

Shana Spring, TPMA Association Manager

Governor Perry Issues Disaster Declaration on Swine Flu

Governor Rick Perry today bolstered the state's precautionary measures to address the swine flu threat as a result of confirmed cases in certain parts of the state by issuing a disaster declaration for the entire state of Texas. The disaster declaration allows the state to implement emergency protective measures and seek reimbursement under the federal Stafford Act for protective measures associated with the state's response to this public health threat. 'Texans need to know there is no cause for panic and Texans can be assured that the state will take every necessary precaution to protect the lives of our citizens,' Gov. Perry said. 'My office, along with the Department of State Health Services and other state, local and federal partners, have a plan in place to protect Texans should there be a pandemic flu outbreak or other health emergency.'..."



Register Now

TPMA Annual Convention

June 25-27, 2009
Isla Grand Beach Resort
South Padre Island, Texas

Highlights

6 CEU's

- Annual Business Meeting
- TPMF "Surf & Turf" Events
- Golf Tournament
- Fishing Tournament
- Poker Tournament
- Awards Luncheon
- TPMA Foundation Silent Auction
- President's Yacht Club Party



Register Now
Meeting Information

www.txpma.org