

# T EXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

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## MEMORANDUM

**TO:** All Interested Parties

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

**DATE:** Monday; August 2, 2010

**RE:** Podiatry Scope of Practice – Resource Information

The following information is made available by agency staff of the Texas State Board of Podiatric Medical Examiners (TSBPME) as guidance only (resource). Unless otherwise specifically cited, this information by the TSBPME 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" respective to the rule making process published in the Texas Register. Furthermore, this information is not a formal legal opinion nor advisory opinion, which this Board does not issue.

**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) provides:** "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 definition of "Foot" was deemed to be invalid in accordance with the **May 23, 2008 Texas 3<sup>rd</sup> Court of Appeals Opinion** (awaiting Court mandate as of July 30, 2010).

**Third, in accordance with Texas Health & Safety Code Subchapter E relating to Medical Staff Membership & Privileges (§241.101 et al):** Procedures to treat the foot/ankle 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 podiatrist 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 being requested 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 Podiatrist to perform 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.**

A list of approved techniques, procedures, etc. is not found in the Statute 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 earning a certification or accreditation through various private “specialty/certifying” boards for surgery, etc. The State Board (i.e. TSBPME) does not maintain a list of credentialing. 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 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 determined by the Texas State Board of Podiatric Medical Examiners. Credentialing is a matter for local determination and community standards.

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 individual limitations of his/her ability and shall not offer services outside his/her scope of practice, qualifications/training or use techniques that exceed his/her individual professional competence. A Podiatrist shall not make any claim, directly or by implication, that he/she possesses professional qualifications or affiliations that he/she does not in fact possess.

Board Rule 375.3(a) "General" provides that: "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 at the [Council on Podiatric Medical Education](#). (CPME: "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.")

### **TEXAS SUPREME COURT & TEXAS 3<sup>rd</sup> COURT OF APPEALS LITIGATION UPDATE**

Otherwise, as of Friday, July 30, 2010, podiatry scope of practice remained pending litigation 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 rendered a decision denying the Board's/TPMA's "Petition For Review" in regards to the May 23, 2008 Texas 3<sup>rd</sup> 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." Until a mandate is issued by the Texas Supreme Court and/or the Texas 3<sup>rd</sup> Court of Appeals in final adjudication of this matter, the definition of "Foot" presently remains valid. While the [May 23, 2008 Texas 3<sup>rd</sup> Court of Appeals Opinion](#) invalidated the definition of "Foot" (awaiting Court mandate as of July 30, 2010), the following is highlighted:

1) The staff of the Board understands the Court's reasoning of this matter. The Texas 3<sup>rd</sup> Court of Appeals had previously and currently explained that the traditional practice of podiatry includes treatment of the ankle.

2) The Court points out that the Board's 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) "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”

While the staff of the Board understands the Court’s explanation on this point, it has always been the Board’s intent that the “Foot” definition did not include the tibia and fibula as permitted anatomy to be practiced on or as being within the scope of podiatric medical practice. The practice of podiatry is limited to treatment of the foot and ankle. [See the Board’s March 23, 2001 definition of "Foot" Texas Register Preamble.](#)

4) In Footnote 2, the Court declined to do what the Appellants 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 5, the Court states: “It is worth noting that although on one hand the Rule impermissibly expands the practice of podiatry, the Rule also seems to truncate the scope as well. The Rule defines the foot as including certain bones and the soft tissues ‘that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.’ 22 Tex. Admin. Code § 375.1(2) (2007). This definition seems to exclude soft tissues that are found exclusively within the foot and, consequently, that are not part of the articulation between the talus and the tibia and fibula.”

8) 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 3<sup>rd</sup> 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."

Again, the Texas 3<sup>rd</sup> Court of Appeals had previously and currently explained that the traditional practice of podiatry includes treatment of the ankle.

Once more, as previously stated in the March 23, 2001 Texas Register Preamble to the Board's definition of "Foot" rule ... the Board "...limits the scope of podiatric medicine to that area that is no higher up the human body than the area at the level at which the structures affect the function of the foot..."

Lastly, 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.

The Board does not mandate to any hospital/facility that a Podiatrist be granted privileges; rather, the Board clarifies podiatry scope of practice (legal/legislative final determinations withstanding for the 82<sup>nd</sup> Texas Legislative Session/2011). Podiatrists experiencing credentialing/privileging issues (as a result of the June 18, 2010 and July 30, 2010 Texas Supreme Court decisions) may contact the Texas Podiatric Medical Association (512-494-1123) for further legal/trade assistance.

### **COMMON PODIATRY WOUND CARE SCENARIO QUESTIONS**

In response to common "Wound Care - Venous Stasis Ulcerations of the Lower Extremity" questions, it will be approached from a "Leg Ulcer" standpoint.

Treatment of most venous stasis ulcers of the ankle would appear to be permissible; qualifications/credentialing withstanding. However, rarely would they involve ulcers above the ankle. If above, this would be outside the scope of practice/licensure for podiatry. When the wound is above the ankle it is not directly affecting the foot function as, for example, a gastrocnemius recession would be needed to treat an equinus deformity, etc.

In some wound care centers throughout the state, there are team scenarios where Podiatrists, Medical Doctors, Nurses, Physical Therapists, Etc. do 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 an impetus of Medical Doctor (MD/DO; i.e. "Physician") delegation of such treatments as authorized by Texas Occupations Code §157.001 "General Authority of Physician to Delegate" which provides that: "(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 (i.e. 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 Podiatry Board (i.e. TSBPME) is NOT making a determination 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**. Any delegation of medical treatment by a Physician to another person appears to mean that the person to whom an act is delegated, is then practicing under the Physician's (Texas Medical Board) medical license. Of course, a person to whom an act is delegated, can NOT bill for that service as a "Physician;" it would rather be some technical component.

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.

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**TRADE ASSOCIATION LINKS:**

- [Texas Podiatric Medical Association](#)
- [Texas Medical Association](#)
- [Texas Orthopaedic Association](#)

**END OF TSBPME AGENCY STAFF RESOURCE INFORMATION MEMORANDUM**

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