

# PODIATRIC MEDICINE PROGRAM

*Administrative Rules of the Texas Department of Licensing and Regulation  
16 Texas Administrative Code, Chapter 130  
(Effective July 1, 2020)*

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## Subchapter A. General Provisions

### 130.1. Authority. *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 202.

### 130.2. Definitions. *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Act--The Podiatric Medical Practice Act of Texas, Texas Occupations Code, Chapter 202.
- (2) Advisory Board--The Podiatric Medical Examiners Advisory Board, Texas Occupations Code, Chapter 202.
- (3) Commission--The Texas Commission on Licensing and Regulation.
- (4) Continuing Medical Education (CME)-- Educational activities which serve to maintain, develop, or increase the knowledge, skills, and professional performance and relationships that a practitioner uses to provide services for patients, the public, or the profession.
- (5) Department--The Texas Department of Licensing and Regulation.
- (6) Executive Director--The executive director of the department.
- (7) Graduate Podiatric Medical Education (GPME)--An accredited graduate podiatric medical education or residency training program.
- (8) License--includes a license, registration, certificate, or other authorization issued under the Act.
- (9) Medical Records--Any records, reports, notes, charts, x-rays, or statements pertaining to the history, diagnosis, evaluation, treatment or prognosis of the patient including copies of medical records of other health care practitioners contained in the records of the practitioner to whom a request for release of records has been made.
- (10) Podiatric Medical Radiological Technician--A person who performs only podiatric procedures under the supervision of a practitioner.
- (11) Public Communication--Any written, printed, visual, or oral statement or other communication made or distributed, or intended for distribution, to a member of the public.
- (12) Practitioner--A person validly licensed by the department to practice podiatric medicine in the State of Texas.
- (13) Publication--Any and all public communications relating to the practitioner's practice, including but not limited to, advertisements, announcements, invitations, press releases, journal articles, periodical articles, leaflets, news stories, materials distributed by private or by United States mail, and signs or placards placed in public view or electronic submission.
- (14) Solicitation--A private communication to a person concerning the performance of a podiatric service for such person.
- (15) Supervision--Responsibility for the control of quality, radiation safety and protection, and technical aspects of podiatric radiological procedures utilized in podiatric medicine for diagnostic purposes.

## Subchapter B. Advisory Board

### 130.20. Board Membership. *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) The Podiatric Medical Examiners Advisory Board consists of nine members appointed by the governor as follows:
  - (1) six members who are licensed in this state to practice podiatry and have been actively engaged in

the practice of podiatry for the five years preceding appointment; and

- (2) three members who represent the public.
- (b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

**130.21. Public Member Eligibility.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

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

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

**130.22. Membership and Employee Restrictions.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) A person may not be a member of the advisory board if:
- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
  - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.
- (c) A person may not be a member of the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

**130.23. Terms; Vacancies.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) Members of the advisory board serve staggered six-year terms, with the term of three members expiring on February 1 of each odd numbered year. At the expiration of the term of each member, the governor shall appoint a successor.
- (b) If a vacancy occurs during a term, the governor shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

**130.24. Grounds for Removal.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) It is a ground for removal from the advisory board that a member:
- (1) does not have at the time of taking office the qualifications required by §202.051 or §202.053 of the Act;
  - (2) does not maintain during service on the advisory board the qualifications required by §202.051 or §202.053 of the Act;
  - (3) is ineligible for membership under §202.054 of the Act;
  - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the

member's term; or

- (5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the advisory board.
- (b) The validity of an action of the advisory board is not affected by the fact that the action is taken when a ground for removal of an advisory board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the governor and the attorney general that a potential ground for removal exists.

**130.25. Compensation; Reimbursement of Expenses.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

An advisory board member may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

**130.26. Presiding Officer** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

The governor shall appoint one of the advisory board members to serve as presiding officer of the advisory board at the pleasure of the governor. The presiding officer may vote on any matter before the advisory board.

**130.27. Meetings.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

**130.28. Training.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
  - (1) this chapter;
  - (2) the department's programs, functions, and rules with respect to this chapter;
  - (3) the results of the most recent formal audit of the department with respect to this chapter;
  - (4) the scope and limitations on the rulemaking authority of the advisory board;
  - (5) the types of rules, interpretations, and enforcement actions that may implicate federal Antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated under this chapter, including rules, interpretations, and enforcement actions that:
    - (A) regulate the scope of practice of persons in a profession or business regulated under this chapter;
    - (B) other laws applicable to members of the advisory board in performing the members' duties; and
    - (C) affect the price of goods or services provided by persons in a profession or business regulated under this chapter; and
    - (D) restrict participation in a profession or business regulated under this chapter;
  - (6) the requirements of:
    - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
    - (B) other laws applicable to members of the advisory board in performing the members' duties; and

- (7) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.
- (c) The executive director shall create a training manual that includes the information required by subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. On receipt of the training manual, each advisory board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

**130.29. Duties of Advisory Board** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

**Subchapter C. Temporary Residency**

**130.30. Temporary Residency License--General Requirements and Application.** *(New section adopted effective November 1, 2018, 43 TexReg 6953;)*

- (a) A person who is enrolled in an accredited graduate podiatric medical education (GPME) program in Texas must hold a temporary residency license.
- (b) The GPME program must be accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
- (c) An applicant granted a temporary residency license for the purpose of pursuing a GPME program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which the applicant is enrolled.
- (d) A temporary residency license granted by the department for the purpose of pursuing a GPME program in the State of Texas is valid until the licensee leaves or is terminated from said GPME program.
- (e) All temporary residency licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Act and this chapter, except that temporary residency licensees are not subject to continuing medical education requirements.
- (f) To be eligible for a temporary residency license an applicant must:
  - (1) be at least 21 years of age;
  - (2) successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;
  - (3) successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;
  - (4) successfully pass all required sections of the American Podiatric Medical Licensing Examination;
  - (5) pay all applicable fees;
  - (6) submit a completed application on a department-approved form;
  - (7) submit a transcript(s) of all relevant coursework, acceptable to the department;
  - (8) successfully pass a criminal history background check;
  - (9) provide proof of having successfully completed a course in cardiopulmonary resuscitation and provide a current certification to that effect;
  - (10) complete the "Memorandum of Understanding for Approved Residence Program";
  - (11) complete the "Certificate of Acceptance for Postgraduate Training Program"; and
  - (12) submit a Self-Query report from the National Practitioner Data Bank.

- (g) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
- (h) The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
- (i) The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

**130.31. Temporary Residency License--Residency Requirements; Program Responsibilities; License Term.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725)*

- (a) All residency programs requesting temporary residency licenses for their enrollees must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation.
- (b) The residency director will be held responsible for the entire program including but not limited to:
  - (1) ensuring that the temporary residency licensee is practicing within the scope of the residency program requirements;
  - (2) ensuring that the temporary residency licensee has read and understood the Act and Rules governing the practice of podiatric medicine; and
  - (3) ensuring that all residency program attendees are properly licensed with the department prior to participation in the program. A temporary residency license to practice podiatric medicine expires on June 30 of each year.
- (c) Within thirty (30) days after the start date of the program each year, the residency director must report to the department a list of all residents enrolled in the program.
- (d) A temporary residency license is valid for one year and the licensee must renew on a department-approved application and pay the required fee. The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address.
- (e) A temporary license holder shall not be considered to be a fully licensed podiatrist who independently practices podiatric medicine without supervision. A temporary residency license holder is a person in training and is limited by the GPME program for residency based supervised patient encounters, supervision of which is designed to protect patients and the citizens of Texas.
- (f) A person enrolled in a GPME program must hold a temporary residency license at all times and shall not be considered to be qualified for a Doctor of Podiatric Medicine license until all residency program requirements have been completed and fulfilled as certified by the GPME program residency director, and all other requirements for licensure have been attained.
- (g) Residents enrolled in an accredited GPME residency program who hold a temporary residency license (i.e. denoted with the letter "T" followed by numerals) may register with the U.S. Drug Enforcement Administration (DEA) to prescribe controlled substances subject to the supervision of the program and residency director. Under no circumstances are residents allowed to prescribe controlled substances for purposes outside of the approved residency program.

**130.32. Temporary Residency License--Final Year of Residency.** *(New Section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725)*

- (a) A holder of a temporary residency license who has entered the final year of an accredited GPME program, who is in good standing with the GPME program, and who is on course to complete the course in a timely manner, may be permitted to apply for the Doctor of Podiatric Medicine license in the spring, provided that the resident has entered and signed the "Memorandum of Understanding for Conditional Issuance of Texas

Doctor of Podiatric Medicine License" (MOU).

- (b) A holder of a temporary residency license who passes the jurisprudence examination, and who is in compliance with the resident's MOU(s), and who meets all other requirements of the law regarding licensure may be issued a Doctor of Podiatric Medicine license prior to completion of the last year of the residency. The Doctor of Podiatric Medicine license issued under this subsection will be subject to the resident's MOU and to the following conditions and restrictions, in addition to any other provisions in statute and rule applicable to a license to practice podiatry, in general that:
- (1) the resident must successfully complete and graduate from the resident's accredited GPME program by the date noted in the resident's MOU with the department, and must submit to the department proof of successful completion and graduation within 30 days after the end date of the residency as noted on the MOU. Failure to timely provide the proof the department requires subjects the Doctor of Podiatric Medicine license to automatic revocation; and
  - (2) the resident who has received a Doctor of Podiatric Medicine license prior to successful completion and graduation from an accredited GPME program, and for such period of time while still a resident, shall practice podiatry only under the temporary residency license, and subject to the scope and limits of the GPME program, and shall not practice podiatry under the Doctor of Podiatric Medicine license until after successful completion and graduation from the GPME program and after providing to the department proof of such completion and graduation.

**130.33. Temporary Residency License--Extensions.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) The executive director may grant the holder of a current temporary residency license an extension for good cause. Good cause may include but is not limited to:
- (1) illness of the holder or a family member for whom the holder is directly or indirectly responsible;
  - (2) a verifiable family emergency; or
  - (3) an additional residency training issue.
- (b) A temporary residency license extension is valid for up to an additional three months and subject to the same responsibilities, restrictions, and conditions found in §130.30.
- (c) The fee for an extended temporary residency license is established in §130.60.
- (d) A temporary residency license extension may be granted a maximum of two times.

**Subchapter D. Doctor of Podiatric Medicine**

**130.40. Doctor of Podiatric Medicine License--General Requirements and Application.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) Any person who wishes to practice podiatric medicine in this state must:
- (1) be at least 21 years of age;
  - (2) successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards
  - (3) successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;
  - (4) successfully pass all required sections of the American Podiatric Medical Licensing Examination and the jurisprudence examination;
  - (5) successfully complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department (successful completion means the GPME program which was actually begun/matriculated is completed; the applicant must have successfully completed the entire program; partial program attendance is not acceptable);

- (6) pay all applicable fees;
  - (7) submit a completed application on a department-approved form;
  - (8) submit all transcripts of relevant college coursework, acceptable to the department;
  - (9) successfully pass a criminal history background check performed by the department;
  - (10) provide proof of successful completion of a course in cardiopulmonary resuscitation(CPR); and
  - (11) successfully pass a National Practitioner Data Bank query check performed by the department.
- (b) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
  - (c) The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
  - (d) The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the podiatrist possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.
  - (e) The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

**130.41. Doctor of Podiatric Medicine License--Jurisprudence Exam.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) All applicants shall be provided detailed information about the examination process prior to exam administration.
- (b) Applicants shall follow the security procedures required for administration of the exam at each testing facility.
- (c) A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while taking an examination required by the department.
- (d) The passing score for the examination shall be determined by the department.

**130.42. Doctor of Podiatric Medicine License--Term; Renewal.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) A Doctor of Podiatric Medicine license is valid for two years.
- (b) To renew a Doctor of Podiatric Medicine license the licensee must:
  - (1) submit a department-approved renewal application;
  - (2) complete all required continuing medical education hours as required by §130.44; and
  - (3) pay the required fee.
- (c) For each license renewal on or after September 1, 2020, a Doctor of Podiatric Medicine must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

**130.43. Doctor of Podiatric Medicine License--Provisional License.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725)*

- (a) An applicant for a provisional license must:
- (1) be at least 21 years of age;
  - (2) successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;
  - (3) successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;
  - (4) successfully pass all required sections of the American Podiatric Medical Licensing Examination;
  - (5) successfully complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department (successful completion means the GPME program which was actually begun/matriculated is completed; the applicant must have successfully completed the entire program; partial program attendance is not acceptable);
  - (6) be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act, subsequent amendments, and rules;
  - (7) furnish proof of such licensure to the department;
  - (8) not have been revoked or suspended in any jurisdiction;
  - (9) successfully pass the jurisprudence exam;
  - (10) pay all applicable fees;
  - (11) submit a completed application on a department-approved form;
  - (12) submit all transcripts of relevant college coursework, acceptable to the department;
  - (13) successfully pass a criminal history background check performed by the department;
  - (14) provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR); and
  - (15) successfully pass a National Practitioner Data Bank query check performed by the department.
- (b) An applicant for provisional licensure must be sponsored by a person currently licensed by the department for at least five years and in good standing under the Act with the following conditions applicable.
- (c) Prior to beginning practice in Texas, the sponsor licensee must ensure the following:
- (1) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and
  - (2) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.
- (d) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.
- (e) An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the department determines that compliance with this subsection constitutes a hardship to the applicant.
- (f) A provisional license is valid for 180 days or until successful passage or failure of the jurisprudence exam and may be renewed three times. It shall be the responsibility of the applicant and sponsor to return the provisional license to the department upon expiration.

- (g) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Act or department rules, such provisional license will be subject to disciplinary action including revocation.
- (h) At the discretion of the executive director, the GPME requirement may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the department demonstrates an acceptable record from that state and from all other states under which the applicant has ever been licensed. (The GPME requirement became effective in Texas on July 1, 1995).
- (i) At the discretion of the executive director, the executive director may excuse an applicant for a license from the National Board Part III (formerly known as PM Lexis) requirement if the executive director determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the executive director relating to the safe care and treatment of patients. (The National Board Part III/PM Lexis came to be in existence in June 1987. Texas began the National Board Part III/PM Lexis requirement for licensure on January 29, 1992.)
- (j) A showing of an acceptable record under this section is defined to include, but is not limited to:
  - (1) a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of or deferred adjudication for a felony; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.
  - (2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the department by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the determination of admittance to licensure in the State of Texas.
  - (3) The applicant shall obtain and submit to the department a letter directly from all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.
- (k) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
- (l) The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.
- (m) The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the podiatrist possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.
- (n) The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

**130.44. Continuing Medical Education--General Requirements.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 hours of continuing medical education (CME) every two years for the renewal of the license to practice podiatric

medicine. One hour of training is equal to one hour of CME.

- (b) Two hours of the required 50 hours of department approved CME shall be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Human Trafficking Prevention, Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, Abuse and Misuse of Controlled Substances, Opioid Prescription Practices, and/or Pharmacology, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations, AMA, AMA affiliated organizations, or governmental entities, or the entities described in subsections (e) and (f) are acceptable.
- (c) Each person initially licensed to practice podiatric medicine in the State of Texas is required to complete two hours of continuing medical education related to approved procedures of prescribing and monitoring controlled substances prior to the first anniversary of date the license was originally issued.
- (d) For each person licensed to practice podiatric medicine in the State of Texas whose practice includes prescription or dispensation of opioids shall annually attend at least one hour of continuing medical education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments.
- (e) A licensee shall receive credit for each hour of podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board. A practitioner may receive credit for giving a lecture, equal to the credit that a podiatrist attending the lecture obtains.
- (f) A licensee shall receive credit for each hour of training for non-podiatric medical sponsored meetings that are relative to podiatric medicine and department approved. The department may assign credit for hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others if approved.
- (g) It shall be the responsibility of the licensee to ensure that all CME hours being claimed meet the standards for CME as set by the commission. Practice management, home study and self-study programs will be accepted for CME credit hours only if the provider is approved by the Council on Podiatric Medical Education. The licensee may obtain up to, but not exceed twenty (20) hours of the aforementioned hours per biennium.
- (h) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three (3) hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six (6) hours of CME credit. Practitioners may only receive credit for one, not both. No on-line CPR certification will be accepted for CME credit.
- (i) If a practitioner has an article published in a peer review journal, the practitioner may receive one (1) hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.
- (j) With the exception of the allowed hours carried forward, the required 50 hours of continuing medical education must be obtained in a 24-month period immediately preceding the date in which the license is to be renewed. The 24-month period will begin on the first full day of the month after the practitioner's date of renewal and end two years later. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of ten (10) hours for the next renewal CME period.
- (k) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.
- (l) The audit process shall be as follows:
  - (1) The department shall select for audit a random sample of license holders to ensure compliance with CME hours.

- (2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education.
- (3) Failure to timely furnish this information within thirty (30) calendar days or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.
- (4) If selected for continuing education audit during the renewal period, the license holder may renew and pay renewal fees.
- (m) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.
- (n) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of fifty (50) hours required every two years.
- (o) The 85th Texas Legislature enacted changes to Chapter 202, Occupations Code, providing the commission with authority to establish a one or two-year license term for licensees. See H.B. 3078, 85th Legislature, Regular Session (2017). The purpose of this transition rule is to provide guidance on how continuing medical education will be assessed when transitioning from a one to two-year license term. This rule applies only to licensees renewing on or after September 1, 2019. Beginning September 1, 2019, the department shall stagger the continuing medical education biennium of licenses as follows. Licensees renewing in an odd numbered year are to obtain 50 hours of CME for a 24-month period between 2019 and 2021; and for every 2-years thereafter in between renewal dates. Licensees renewing in an even numbered year are to obtain 50 hours of CME for a 24-month period between 2020 and 2022; and for every 2-years thereafter in between renewal dates. This rule expires on August 31, 2022.

**130.45. Continuing Medical Education--Exceptions and Allowances; Approval of Hours.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) Delinquency for continuing education may be allowed in cases of hardship as determined on an individual basis by the executive director. In cases of such hardships, hours of delinquency must be current at the end of a three-year period.
- (b) Any practitioner not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming practice of podiatric medicine, that person shall fulfill the requirements of the preceding year from the effective date prior to the resumption of practice.
- (c) Any program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association is acceptable to the department.
- (d) Hours obtained in Colleges or Universities while working on a degreed or non-degreed program or an approved residency program by the Council on Podiatric Medical Education and providing these courses shall be of a medical nature, shall be considered as having fulfilled the requirements of continuing education hours for the fiscal year.
- (e) Hours of continuing education submitted to the department for approval, must be certified by the Continuing Education Director of the institution or organization from which the hours were obtained, that he/she was in actual attendance for the specified period.

**130.46. Inactive Status.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) A licensee may place a license on inactive status by applying for inactive status on a form prescribed by the department.
- (b) A holder of a license that is on inactive status may not practice podiatric medicine in this state. The practice of podiatric medicine by a holder of a license that is on inactive status constitutes the practice of podiatric medicine without a license.
- (c) To change from an inactive status to an active license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the required fee; and

- (3) complete the CME that is required for the renewal of an active license during the preceding license period. CME hours used to satisfy the requirement for changing from an inactive license status to an active license status may not also be utilized for a future renewal of an active license.

**130.47. Hyperbaric Oxygen Certificate--Application Requirements and Guidelines.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) A practitioner may apply, on a department-approved form and pay the required fee, for a certificate to supervise and administer hyperbaric oxygen following the published recommendations of the Undersea and Hyperbaric Medical Society, Inc. (UHMS) and within the credentials and bylaws of the hospital that operates the hyperbaric unit with the following stipulations:
  - (1) A practitioner practicing hyperbaric oxygen must do so in a hospital setting.
  - (2) The practitioner must, in addition, show evidence of attendance and successful completion of a hyperbaric medicine team training course that is recognized by the Undersea and Hyperbaric Medical Society. That person may only utilize hyperbaric oxygen in the treatment of the foot as recognized by the Podiatric Medical Practice Act.
  - (3) Prior to administering hyperbaric oxygen, a practitioner must have on file with the department documentation certifying compliance with the above requirements.
- (b) The Hyperbaric Oxygen Certificate is valid for one year and must be renewed annually by submitting a registration application, and paying the required fee.
- (c) Certificate holders must inform the department of any address change or change of hospital setting no later than ten (10) business days after the change is made.
- (d) A hyperbaric oxygen certificate must be clearly displayed in the office alongside the original license.

**130.48. Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) For the purpose of this section, conscious sedation means the production, by pharmacological or non-pharmacological methods, or a combination thereof, of an altered level of consciousness in a patient.
- (b) Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.
- (c) Conscious sedation of a patient by nitrous oxide shall be induced, maintained, and continuously supervised only by the podiatric physician or by the assistant under continuous direct supervision of the practitioner. The nitrous oxide shall not be flowing if the practitioner is not present in the room.
- (d) To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purpose in the State of Texas, the practitioner must first register with the department and provide the following:
  - (1) proof that the practitioner has completed a didactic and clinical course which includes aspects of monitoring patients and the hands-on use of the gas machine. The didactic and clinical course must:
    - (A) be directed by a licensed and certified M.D., D.O., D.D.S., or D.P.M., in the State of Texas with advanced educational and clinical experience with routine administration of nitrous oxide/oxygen inhalation conscious sedation;
    - (B) include a minimum of four (4) hours didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation; and
    - (C) include a minimum of six (6) hours of clinical experience under personal supervision; and
  - (2) proof that the practitioner has completed a continuing medical education course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice; and

- (3) proof that the practitioner has completed a basic and advanced CPR program sponsored by either the American Heart Association or the American Red Cross. Proof of current certification shall be the responsibility of the podiatric physician. Additionally, the D.P.M. shall provide documented training or emergency procedures to office personnel.
- (e) The department may at any time at its own discretion and without prior notification require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.
- (f) A registration will not be renewed if a current certificate of inspection of the gas machine is not filed with the department.
- (g) Registrations are valid for one year and must be renewed annually by submitting a department-approved application, and paying the required fee.
- (h) Registrants shall inform the department of any address change no later than ten (10) business days after the change is made.
- (i) When a registration permit is issued, it must be clearly displayed in the office.
- (j) All personnel employed in Texas in an office of a practitioner and who shall assist in the nitrous oxide/oxygen inhalation conscious sedation procedure shall be trained in basic life support and shall have annual reviews of emergency protocols, contents and use of emergency equipment, and basic cardiopulmonary resuscitation. Documentation verifying these annual reviews shall be maintained in the office of the practitioner who employs the personnel and shall be provided to the department if requested.
- (k) The practitioner shall evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to ensure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.
- (l) Equipment used must meet the following safety criteria: The gas machine must have:
  - (1) 30% minimum oxygen flow;
  - (2) Glass flow tubes;
  - (3) Nitrous oxide fail-safe (will not flow without oxygen);
  - (4) Automatic room air intake in the event the bag is empty;
  - (5) Non-rebreathing check valve;
  - (6) Oxygen flush; and
  - (7) Auxiliary oxygen outlet with one demand valve resuscitation assembly per office.
- (m) All practitioners administering nitrous oxide must have:
  - (1) a functioning vacuum system;
  - (2) a scavenger system;
  - (3) appropriate emergency drugs and equipment for resuscitation;
  - (4) a manifold to provide for protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, and a copy of the service check is to be filed with the department; and
  - (5) a method of locking the nitrous oxide tanks after business hours.

**§130.49. Voluntary Charity Care Status.** *(New section adopted effective September 1, 2019; 44 TexReg 4725)*

- (a) As used in this section:

- (1) "Voluntary charity care" means medical care provided for no compensation to:
    - (A) indigent populations;
    - (B) in medically underserved areas; or
    - (C) for a disaster relief organization.
  - (2) "Compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.
- (b) To be eligible for voluntary charity care status, a practitioner must:
- (1) apply on a department approved form; and
  - (2) pay any required fee.
- (c) The practice by a podiatrist on voluntary charity care status:
- (1) does not include the provision of podiatric services for compensation which has monetary value of any kind;
  - (2) is limited to voluntary charity care for which the practitioner receives no compensation of any kind for podiatric services rendered;
  - (3) does not include the provision of podiatric services to members of the practitioner's family; and
  - (4) does not include the self-prescribing of controlled substances or dangerous drugs.
- (d) A podiatrist on voluntary charity care status must:
- (1) renew the voluntary charity status every two years in a manner prescribed by the department; and
  - (2) complete twenty-five (25) hours of CME during each renewal cycle.
- (e) A podiatrist on voluntary charity care status is subject to disciplinary action for:
- (1) a violation of the Act or rule adopted under this chapter;
  - (2) obtaining, or attempting to obtain, voluntary charity care status by submitting false or misleading information to the department; or
  - (3) unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the practitioner engages in the compensated practice of podiatric medicine, the provision of podiatric services to members of the practitioner's family, or the self-prescribing of controlled substances or dangerous drugs.
- (f) A podiatrist on voluntary charity care status must apply with the department before returning to active status by:
- (1) submitting a department approved application;
  - (2) providing a description of the work performed while on voluntary charity care status;
  - (3) paying the required doctor of podiatric medicine renewal fee; and
  - (4) completing an additional 25 hours of CME to meet the doctor of podiatric medicine renewal requirements;
- (g) The department may require additional information, education, examinations, or training from a podiatrist who has been on voluntary charity care status for more than two years before returning to active status.

#### **Subchapter E. Practitioner Responsibilities and Code of Ethics**

- (a) A practitioner shall use the following professional identifiers in any publication related to the practice of podiatric medicine: Doctor of Podiatric Medicine, D.P.M., Podiatrist, Podiatric Physician.
- (b) Practitioners shall include one of the following designations to describe his or her practice in all publications related to the practice of podiatric medicine: Foot Surgeon, Podiatric Surgeon, Foot Specialist, Doctor and Surgeon of the Foot, Injuries and Diseases of the Foot, Podiatric Physician.
- (c) The purpose of this section and of so limiting the professional designations of a practitioner and the practitioner's practice business is to ensure that the public and all prospective patients are reasonably informed of the distinction between a podiatrist and other medical practitioners as is reflected by the difference in training and licensing and the scope of practice.
- (d) A practitioner shall not use a trade name or assumed name to identify his practice, except as authorized in this section.
- (e) A practitioner must provide the department with the practitioner's practice name, corporate name, trade name or assumed name to identify an individual practice, or a group of podiatric physicians with which he/she is practicing and the address, and notify the department of any changes.
- (f) The name of a professional corporation created for the practice of podiatric medicine shall include one of the following suffixes:
  - (1) (Name), A Professional Corporation;
  - (2) (Name), A Prof. Corp.;
  - (3) (Name), P.C.;
  - (4) (Name), Incorporated;
  - (5) (Name), Inc.;
  - (6) (Name), Professional Association;
  - (7) (Name), P.A.;
  - (8) (Name), P.L.L.P.;
  - (9) (Name), Professional Limited Liability Partnership;
  - (10) (Name), P.L.L.C.;
  - (11) (Name), Professional Limited Liability Company;
  - (12) (Name), L.L.C.; or
  - (13) (Name), Limited Liability Company.
- (g) A practitioner practicing in a group composed of practitioners from different branches of the healing arts may practice under a corporate name, trade name or assumed name adopted by the group, provided the name fairly and objectively identifies the practice. In addition, within the group, the practitioner shall identify himself appropriately.

**130.51. Advertising.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725)*

- (a) A practitioner may advertise. A practitioner shall not use or participate in the use of any publication, including advertisements, news stories, press releases, and periodical articles, that contains a false, misleading, or deceptive statement.
- (b) A practitioner may not include any of the following types of statements in any advertisements or press releases:

- (1) a misrepresentation of fact, or claims as fact something that has not been generally accepted among the podiatric community or by the department as having been proven or established as fact;
  - (2) a statement that is likely to mislead or deceive or entice or persuade a reasonable person because it fails to make full disclosure of relevant facts whether regarding fees, modes of treatment, conditions or techniques of surgery, post-operative conditions such as degree of pain, length of time of recovery, mobility and strength during recovery, and the like;
  - (3) a statement that is intended or likely to create in an ordinary reasonable person false or unjustified expectations of favorable results;
  - (4) a laudatory statement, or other statement or implication that the practitioner's services are of exceptional quality;
  - (5) a statistical data or information that reflects or is intended to reflect quality or degree of success of past performance, or prediction of future success;
  - (6) a representation that podiatric services can or will be completely performed for a stated fee amount when this is not the case, or makes representations with respect to fees that do not disclose all variables affecting the fees, or makes representations that might reasonable cause an ordinary prudent person to misunderstand or be deceived about the fee amount;
  - (6) a representation that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required; or
  - (8) a representation that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required.
- (c) Information contained in a public communication by a practitioner may include, but is not limited to the following:
- (1) name, address, telephone numbers, office hours, and telephone-answering hours;
  - (2) biographical and educational background;
  - (3) professional memberships and attainments and certifications, subject, however, to the provisions of subsection (e);
  - (4) description of services offered, subject, however to the provisions of subsection (f);
  - (5) foreign language ability;
  - (6) acceptable credit arrangements, subject, however, to the provisions of subsection (b)(2) and (b)(6);
  - (7) the limitation of practice to certain areas of podiatric medicine;
  - (8) the opening or change in location of any office and change in personnel;
  - (9) fees charged for the initial consultation, provided that if the time for the consultation is to be limited, any such limitation on the time shall be stated;
  - (10) fixed fees for specific podiatric treatments and services, subject, however, to the provisions of subsection (b)(2) and (b)(6); and
  - (11) a statement that a schedule of fees or an estimate of fees to be charged for specific treatments or services will be available on request.
- (d) All practitioners shall retain recordings, transcripts, or copies of all public communications by date of publication for a period of at least two years after such communication was made.
- (e) A practitioner may advertise or publish the name of any board of certification under which the practitioner has fully and validly become certified provided that the full name of the certifying board is included in the publication: except as provided by this subsection, practitioners may not list in any type of advertisement or public communication any certifying board that is not approved or recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

- (f) Each certifying board that is not recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association must meet each of the following requirements:
- (1) the certifying board requires all practitioners who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of podiatric medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;
  - (2) the certifying board has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to §501(c);
  - (3) the certifying board has a permanent headquarters and staff;
  - (4) the certifying board has at least 100 duly licensed certificants from at least one-third of the states; and
  - (5) the certifying board requires all practitioners who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of podiatric medicine in which the practitioner is seeking certification, and the certifying organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the department, with the advice of the advisory board, to be inadequate in scope, content, and duration in that specialty or subspecialty area of podiatric medicine in order to protect the public health and safety.
- (g) The terms "board eligible", "board qualified", or any similar words or phrase calculated to convey the same meaning may not be used in advertising.
- (h) If a publication by or for a practitioner includes mention of a particular surgical technique or device, the publication must also include a specific and true statement that reveals to an ordinary reasonable person the limits and scope and specific purpose of the technique so as not to mislead an ordinary reasonable person regarding the difficulty, pain or discomfort, length of time for surgery or recuperation, or possibility of complications.

**130.52. Medical Offices.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) All podiatric medical offices shall contain the minimum amount of treatment equipment and facilities so that the podiatric physician may provide his usual and customary podiatric medical services.
- (b) The office must be adequately staffed and equipped to ensure that treatment is timely and properly administered.
- (c) It shall be the responsibility of each practitioner to ensure that any change of address or phone number(s) for each practitioner's location(s) are reported to the department no later than ten (10) business days after the change is made.

**130.53. Podiatric Medical Radiological Technicians.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) This section does not apply to persons certified by the Texas Medical Board under the Medical Radiologic Technologist Certification Act who are Non-Certified Technicians (NCTs), Certified Medical Radiologic Technologists (MRTs) or Limited Medical Radiologic Technologists (LMRTs).
- (b) It is the practitioner's responsibility to ensure that all individuals wishing to perform podiatric radiological procedures are properly trained and apply for registration with the department as a podiatric medical radiological technician.
- (c) Podiatric equipment training course providers, and standards for curricula and instructors must be approved by the department.
- (d) Podiatric medical radiological technician applicants must:
  - (1) be 18 years of age or older;

- (2) successfully complete the following 20 hours of clinical and didactic training requirements and provide proof of completion to the department:
  - (A) 5 class hours and 5 out of class hours of radiation safety and protection for the patient, self, and others;
  - (B) 1 class and 2 out of class hours of radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance;
  - (C) 1 class and 4 out of class hours in podiatric radiologic procedures, imaging production and evaluation; and
  - (D) 1 class and 1 out of class hour in methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects; and
- (3) submit a department-approved application.
- (e) Out of classroom training hours must be verified by a supervising podiatrist and require the student to maintain a log demonstrating the successful production of 60 x-rays in the clinical setting overseen and signed by the supervising podiatrist.
- (f) A podiatric medical radiological technician must hold a registration and may perform only podiatric radiological procedures.
- (g) A podiatric medical radiological technician registrant shall perform radiological procedures only under the supervision of a practitioner physically present on the premises.
- (h) A podiatric medical radiological technician registrant shall not perform any dangerous or hazardous procedures as identified by the Texas Medical Board.
- (i) All registrants must comply with the safety rules of the Texas Department of State Health Services, Radiation Control Program relating to the control of radiation.
- (j) Registration is valid for one year and must be renewed annually by submitting a department-approved application. For each registration renewal on or after September 1, 2020, a radiological technician must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.
- (k) Registrants shall inform the department of any address change or change of supervising podiatric physician within two (2) weeks.
- (l) The department may refuse to issue or renew a registration to an applicant or a podiatric medical radiological technician who:
  - (1) violates the Podiatric Medical Practice Act, the Rules, an order of the executive director or commission previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;
  - (2) violates the Medical Radiologic Technologist Certification Act, or the Rules promulgated by the Texas Medical Board;
  - (3) violates the Rules of the Texas Department of State Health Services for Control of Radiation;
  - (4) obtains, attempts to obtain, or uses a registration by bribery or fraud;
  - (5) engages in unprofessional conduct, including but not limited to, conviction of a crime or commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care;
  - (6) develops or has an incapacity that prevents the practice of podiatric medical radiological technician with reasonable skill, competence, and safety to the public as a result of:
    - (A) an illness;

- (B) drug or alcohol dependency; or habitual use of drug or intoxicating liquors; or
- (C) another physical or mental condition;
- (7) fails to practice in an acceptable manner consistent with public health and welfare;
- (8) has disciplinary action taken against a radiological certification, permit, or registration in another state, or by another regulatory agency;
- (9) engages in acts requiring registration under these rules without a current registration from the department;
- (10) has had a registration revoked, suspended, or has received disciplinary action.
- (m) The commission, executive director, or department, as appropriate, may suspend, revoke, or refuse to issue or renew the registration upon finding that a podiatric medical radiological technician has committed any offense listed in this section.

**130.54. Records.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) All practitioners shall make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of his or her patients for reference and for protection of the patient for at least five years following the completion of treatment.
- (b) The records of the identity, diagnosis, evaluation, or treatment of a patient by a practitioner that are created or maintained by a practitioner are the property of the practitioner.
- (c) A practitioner shall furnish copies of medical records or a summary or narrative of the medical records pursuant to a written request by the patient or by a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs, or an attorney ad litem appointed for the patient or personal representative if the patient is deceased, except if the practitioner determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The practitioner may delete confidential information about another patient or family member of the patient who has not consented to the release.
- (d) The requested copies of medical records of a summary or narrative of the records shall be furnished by the practitioner within thirty (30) days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.
- (e) As referenced in subsection (c), if the practitioner denies the request for copies of medical records or a summary or narrative of the records, either in whole or in part, the practitioner shall furnish the patient a written statement, signed and dated, stating the reason for the denial, and a copy of the statement denying the request shall be placed in the patient's medical records.
- (f) The practitioner responding to a request for such information shall be entitled to receive a reasonable fee for providing the requested information. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery of the records and x-rays.
- (g) The practitioner providing copies of requested medical records or a summary or a narrative of such medical records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a health care provider licensed in Texas or licensed by any state, territory, or insular possession of the United States or any State or Province of Canada if requested for purposes of emergency or acute medical care. In the event the practitioner receives a proper request for copies of medical records or a summary or narrative of the medical records for purposes other than for emergency or acute medical care, the practitioner may retain the requested information until payment is received. In the event payment is not routed with such a request, within ten calendar days from receiving a request for the release of such medical records for reasons other than emergency or acute medical care, the practitioner shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Medical records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agency, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.
- (h) A subpoena shall not be required for the release of medical records requested pursuant to a proper release for records under this section made by a patient or by the patient's guardian or other representative duly

authorized to obtain such records.

- (i) In response to a proper request for release of medical records, a practitioner shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.
- (j) The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law.

**130.55. Practitioner Code of Ethics.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) The health and safety of patients shall be the first consideration of the practitioner. The principal objective to the practitioner is to render service to humanity. A practitioner shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The practitioner 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 practitioner shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.
- (b) A practitioner 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 practitioner shall not abandon a patient he has undertaken to treat. The practitioner may discontinue treatment after reasonable notice has been given to the patient by the practitioner of the practitioner's intention to discontinue treatment and the patient has had a reasonable time to secure the services of another practitioner or all podiatric medical services actually begun have been completed and there is no contract or agreement to provide further treatment.
- (c) A practitioner shall not aid an unethical practitioner or engage in any subterfuge with any person, business, or organization. The practitioner 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.
- (d) A person under a practitioner's care or treatment on whom podiatric medical surgery is to be performed in connection with such care or treatment should be informed by the practitioner of the identity of the surgeon before the surgery is performed.
- (e) The practitioner has special knowledge which his patient does not have; therefore, to avoid misunderstanding he should advise his patient in advance of beginning treatment of the nature and extent of the treatment needed; the approximate time required to perform the recommended treatment and services; and any further or additional services or return by the patient for treatment, adjustments, or consultation and the time in which this shall occur. A practitioner should inform his patients as to the fees to be charged for services before the services are performed, regardless of whether the fees are charged on a case basis, on the basis of a separate charge for each service, or a combination of these two methods, or some other basis. If an exact fee for a particular service, as in extended care cases, cannot be quoted to a patient, a fair and reasonable estimate of what the fee will be and the basis on which it will be determined should be given the patient.
- (f) A practitioner shall not tender or receive a commission for a referral.

**130.56. General Authority to Delegate.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) A practitioner may delegate to a qualified and properly trained podiatric medical assistant acting under the podiatrist's appropriate supervision any podiatric medical act that a reasonable and prudent podiatrist would find within the scope of sound medical judgment to delegate if:
  - (1) in the opinion of the delegating podiatrist, the act:
    - (A) can be properly and safely performed by the podiatric medical assistant to whom the podiatric medical act is delegated; and
    - (B) is performed in its customary manner and not in violation of any other statute; and
  - (2) the podiatric medical assistant to whom the podiatric medical act is delegated does not represent to

the public that the podiatric medical assistant is authorized to practice podiatric medicine.

- (b) The delegating podiatrist is responsible for the podiatric medical acts of the podiatric medical assistant performing the delegated medical acts.
- (c) The department may determine whether:
  - (1) an act constitutes the practice of podiatric medicine; and
  - (2) a podiatric medical act may be properly or safely delegated by podiatrists.

**130.57. Sexual Misconduct.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) Sexual misconduct is behavior that exploits the physician-patient or physician-staff member relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a person as sexual.
- (b) Sexual misconduct may be the basis for disciplinary action if the behavior was injurious or there is an exploitation of the physician-patient or physician-staff member relationship.
- (c) Sexual violation may include physician-patient or physician-staff member sex, whether or not initiated by the patient/staff, and engaging in any conduct with a patient/staff that is sexual or may be reasonably interpreted as sexual, including but not limited to:
  - (1) sexual intercourse, genital-to-genital contact;
  - (2) oral to genital contact;
  - (3) oral to anal contact, genital to anal contact;
  - (4) kissing in a romantic or sexual manner;
  - (5) touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient/staff has refused or has withdrawn consent;
  - (6) encouraging the patient/staff to masturbate in the presence of the physician or masturbation by the physician while the patient/staff is present; and
  - (7) offering to provide practice-related services, such as drugs, in exchange for sexual favors.
- (d) Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient/staff, including but not limited to:
  - (1) disrobing or draping practices that reflect a lack of respect for the patient's/staff's privacy, deliberately watching a patient/staff dress or undress, instead of providing privacy for disrobing;
  - (2) subjecting a patient/staff to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient/staff or when consent has been withdrawn;
  - (3) examination or touching of genitals without the use of gloves;
  - (4) inappropriate comments about or to the patient/staff, including but not limited to making sexual comments about a person's body or underclothing, making sexualized or sexually demeaning comments to a patient/staff, criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual), making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation;
  - (5) engaging in treatment or examination of a patient/staff for other than bona fide health care purposes or in a manner substantially inconsistent with reasonable health care practices;
  - (6) using the physician-patient or physician-staff member relationship under the pretext of treatment to solicit a date;

- (7) initiation by the physician of conversation regarding the sexual problems, preferences, or fantasies of the physician; and
  - (8) examining the patient/staff intimately without consent.
- (e) Sexual exploitation by a practitioner is the breakdown of the professionalism in the physician/patient/staff relationship constituting sexual abuse. Sexual exploitation may undermine the therapeutic relationship, may exploit the vulnerability of the patient/staff, and ultimately may be detrimental to the patient's/staff's emotional well-being, including but not limited to:
- (1) causing emotional dependency of the patient/staff;
  - (2) causing unnecessary dependence outside the therapeutic relationship;
  - (3) breach of trust; and
  - (4) imposing coercive power over the patient/staff.
- (f) A third impartial person who is the same sex as the patient must be present in the examining room if a patient is asked to disrobe or if the genitalia are examined.
- (g) The practitioner under investigation for sexual misconduct may be required to have a complete medical evaluation, including appropriate mental and physical examination. Laboratory examination should include appropriate urine and blood drug screens.
- (h) The psychiatric history and mental status examination is to be performed by a psychiatrist knowledgeable in the evaluation suspected of sexual misconduct. The examination may include neuropsychological testing.
- (i) Sexual violation or impropriety may warrant disciplinary action by the department up to and including revocation of license.
- (j) In the event a physician applies for license reinstatement, any petition for reinstatement will include the stipulation that additional mental and physical evaluations may be required prior to the department's review for reinstatement to ensure the continuing protection of the public.

**§130.58. Standards for Prescribing Controlled Substances and Dangerous Drugs.** *(New section adopted effective September 1, 2019; 44 TexReg 4725; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) Podiatrists shall comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to requirements set forth by the United States Drug Enforcement Administration, United States Food & Drug Administration, Texas Health & Human Services Commission, Texas Department of Public Safety, Texas State Board of Pharmacy, and the department.
- (b) A podiatrist may not prescribe a controlled substance except for a valid podiatric medical purpose and in the course of podiatric practice.
- (c) A podiatrist may not confer upon and may not delegate prescriptive authority (the act of prescribing or ordering a drug or device) to any other person.
- (d) A podiatrist may designate an agent to communicate a prescription to a pharmacist. A podiatrist who designates an agent shall provide a pharmacist on request with a copy of the podiatrist's written authorization for a designated agent to communicate a prescription and shall maintain at the podiatrist's usual place of business a list of the designated agents. The podiatrist remains personally responsible for the actions of the designated agent who communicates a prescription to a pharmacist.
- (e) Responsible prescribing of controlled substances requires that a podiatrist consider certain elements prior to issuing a prescription, including, but not limited to:
  - (1) reviewing the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database;
  - (2) the patient's date of birth matches with proper identification;

- (3) an initial comprehensive history and physical examination is performed;
  - (4) the Schedule II prescription copy is in the chart or record found for each prescription written; and
  - (5) alternative therapy (e.g. ultrasound, TENS) discussed and prescribed for the patient.
- (f) Prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, a podiatrist shall review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database. Failure to do so is grounds for disciplinary action by the department.
  - (g) Prior to prescribing any controlled substance, a podiatrist may review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database.
  - (h) An employee of the podiatrist acting at the direction of the podiatrist may perform the function described in subsection (e) and (f) so long as that employee acts in compliance with HIPAA and only accesses information related to a particular patient of the podiatrist.
  - (i) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may access the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database to inquire about the podiatrist's own Schedule II, III, IV, and V prescription drug activity.
  - (j) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may not access the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database for reasons not directly related to a patient under their care. Unauthorized access is grounds for disciplinary action by the department.
  - (k) If a podiatrist uses an electronic medical records management system (health information exchange) that integrates a patient's Schedule II, III, IV, and V prescription drug history data from the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database, a review of the electronic medical records management system (health information exchange) with the integrated data shall be deemed compliant with the review of the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database as required under §481.0764(a) of the Texas Health and Safety Code and these rules.
  - (l) The duty to access a patient's Schedule II, III, IV, and V prescription drug history report through the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database as described in subsection (e) does not apply in the following circumstances: (1) it is clearly noted in the patient's medical record that the patient has a diagnosis of cancer or is in hospice care; or (2) the podiatrist or an employee of the podiatrist makes a good faith attempt to access the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the podiatrist or an employee of the podiatrist and the good faith attempt and circumstances are clearly documented in the patient's medical record for prescribing a controlled substance.
  - (m) Information obtained from the Texas State Board of Pharmacy's – Texas Prescription Monitoring Program (PMP) database may be included in any form in the searched patient's medical record and is subject to any applicable state or federal confidentiality, privacy or security laws.
  - (n) In accordance with Texas Health and Safety Code Chapter 483, Subchapter E., a podiatrist may prescribe an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist the person who is at risk of experiencing an opioid-related drug overdose. A podiatrist who prescribes an opioid antagonist shall document the basis for the prescription in the medical record of the person who is at risk of experiencing an opioid-related drug overdose.

**§130.59. Opioid Prescription Limits and Required Electronic Prescribing.** *(New section adopted effective July 1, 2020; 45 TexReg 4333)*

- (a) In this section, “acute pain” means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited and the term does not include:
  - (1) chronic pain;

- (2) pain being treated as part of cancer care;
  - (3) pain being treated as part of hospice or other end-of-life care; or
  - (4) pain being treated as part of palliative care.
- (b) For the treatment of acute pain, a podiatrist may not:
- (1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or
  - (2) provide for a refill of an opioid.
- (c) After January 1, 2021 all controlled substances must be prescribed electronically except:
- (1) in an emergency or in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, in a manner provided for by the Texas State Board of Pharmacy rules;
  - (2) by a practitioner to be dispensed by a pharmacy located outside this state, in a manner provided for by the Texas State Board of Pharmacy rules;
  - (3) when the prescriber and dispenser are in the same location or under the same license;
  - (4) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;
  - (5) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;
  - (6) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;
  - (7) for a drug under a research protocol;
  - (8) by a practitioner who has received a waiver under Section 481.0756 of the Texas Health and Safety Code from the requirement to use electronic prescribing; or
  - (9) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

#### **Subchapter F. Fees**

**130.60. Fees.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) Fees paid to the department are non-refundable.
- (b) Fees are as follows:
  - (1) Temporary Residency License (Initial and Renewal)--\$125
  - (2) Extended Temporary License extension--\$50
  - (3) Provisional License--\$125
  - (4) Doctor of Podiatric Medicine Initial License--\$750
  - (5) Doctor of Podiatric Medicine Renewal License--\$700
  - (6) Voluntary Charity Care Status License (Initial and Renewal)--\$0

- (7) Active Duty Military Members--\$0
- (8) Hyperbaric Oxygen Certificate--\$25
- (9) Nitrous Oxide Registration--\$25
- (10) Podiatric Medical Radiological Technicians--\$25
- (11) Duplicate License/replacement license--\$25
- (12) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 (relating to Criminal History Evaluation Letters).
- (13) A dishonored/returned check or payment fee is the fee prescribed under §60.82 (relating to Dishonored Payment Device).
- (14) Late renewal fees for licenses issued under this chapter are provided under §60.83 (relating to Late Renewal Fees).

**§130.61. Transition Rule for Two-year License Terms.** *(New section adopted effective September 1, 2019; 44 TexReg 4725)*

- (a) The 85<sup>th</sup> Texas Legislature enacted changes to Chapter 202, Occupations Code, providing the commission with authority to establish a one or two-year license term for Doctors of Podiatric Medicine licensees. See H.B.3078, 85<sup>th</sup> Legislature, Regular Session (2017).
- (b) The purpose of this transition rule is to provide guidance on how the fees will be assessed when transitioning from a one to two-year license term. This rule applies only to licenses expiring on or after September 1, 2019.
- (c) Beginning September 1, 2019, the department shall stagger the renewal of licenses and issue a one-year license for renewal fee of \$350 to a practitioner whose initial license was issued in an even-numbered year.
- (d) This rule expires on August 31, 2020.

**Subchapter G. Enforcement**

**130.70. Complaints and Claims.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) The licensee must display a department-approved sign or provide to all patients and consumers a brochure that notifies consumers or recipients of services of the name, mailing address, website, and telephone number of the department and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the department.
- (b) The sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients. The consumer brochure, if chosen, must be prominently displayed and available to patients and consumers at all times.
- (c) Each defendant practitioner against whom a professional liability claim or complaint has been filed must report the claim or complaint to the department. The information is to be reported by insurers or other entities providing medical professional liability insurance for a practitioner. If an insurance carrier does not adequately report, reporting shall be the responsibility of the practitioner.
- (d) One separate report shall be filed for each defendant insured practitioner.
- (e) The information must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached.
- (f) The information reported must contain at least the requested data as follows:
  - (1) There must be enough identification data available to enable department staff to match the closure report to the original file. The data required to accomplish this include:
    - (A) name and license number of defendant practitioner(s); and
    - (B) name of plaintiff; or

- (2) A court order or settlement agreement is acceptable and should contain the necessary information to match the closure information to the original file.
- (g) Failure by a licensed insurer to report under this section shall be referred to the Texas Department of Insurance and sanctions under the Texas Insurance Code maybe imposed for failure to report.
- (h) For the purposes of this section a professional liability claim or complaint shall be defined as a cause of action against a practitioner for treatment, or other claimed departure from accepted standards of medical or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract to include interns, residents, supervising practitioner, on-call practitioner, consulting practitioner, and those practitioner who administer, read, or interpret laboratory tests, x-rays, and other diagnostic studies.
- (i) Claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:
  - (1) Product liability claims;
  - (2) antitrust allegations;
  - (3) allegations involving improper peer review activities;
  - (4) civil rights violations;
  - (5) allegations of liability for injuries occurring on a podiatric physician's property, but not involving a breach of duty in the podiatric physician-patient relationship; or
  - (6) Business disputes.
- (j) Claims that are not required to be reported under this chapter may however be voluntarily reported pursuant to the provisions of the Act.

**130.71. Enforcement Authority.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 202 and any associated rules may be used to enforce Texas Occupations Code, Chapter 202 and this chapter.

**130.72. Administrative Penalties and Sanctions.** *(New section adopted effective November 1, 2018, 43 TexReg 6953; amended effective September 1, 2019, 44 TexReg 4725; amended effective July 1, 2020; 45 TexReg 4333)*

- (a) If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 202, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 202, any associated rules, and consistent with the department's enforcement plan.
- (b) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database may not disclose or use the information in a manner not authorized by law.
- (c) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person discloses or uses the information in a manner not authorized by law.
- (d) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information.
- (e) The department shall deny an application for license, and shall revoke the license of a person licensed under Chapter 202, Texas Occupations Code, as required by Chapter 108, Subchapter B, Texas Occupations Code.
- (f) A person whose application for licensure has been denied, or whose license has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B may reapply or seek reinstatement as provided by that

subchapter.

**130.73. Conditions of Suspension of License.** *(New section adopted effective November 1, 2018, 43 TexReg 6953)*

- (a) Suspension of a license means that the office of the practitioner is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and the licensee may not participate for income in any professional activity that is directly related to diagnosis or treatment of a patient or activities that involve consultation services related to management of a practice. The practitioner may refer patients to another practitioner for treatment or consultation during the period of the suspension, but the practitioner shall not derive any income from such referrals. The practitioner may allow another practitioner to see the practitioner's patients during the period of the suspension the practitioner's office or other practitioner's office, but the practitioner shall derive no income from the other practitioner by way of referral fees, or the like.
- (b) The practitioner's office may remain open for the purposes of administrative work, including making future appointments, arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters not directly related to the diagnosis and treatment of patients.
- (c) If the suspended practitioner shares offices with another practitioner, the other practitioner shall be allowed to continue to practice, but the suspended practitioner shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients. The department may, through unannounced visits or by requesting documentation, check on the business arrangement that the suspended practitioner has with the other practitioner(s) regarding the renting of equipment, rental of business facilities, referral fees or any other negotiated arrangement so as to be sure that the suspended practitioner is not deriving any monies from the practice of podiatric medicine.
- (d) If a license suspension is probated, the commission or executive director may require the licensee to:
  - (1) report regularly to the department on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the commission or executive director; or
  - (3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

**§130.74. Penalty Matrix.** *(New section adopted effective September 1, 2019; 44 TexReg 4725)*

- (a) In this section the following statutes and rules are referenced:
  - (1) Texas Health and Safety Code, Chapter 181
  - (2) Texas Health and Safety Code, Chapter 311
  - (3) Texas Health and Safety Code, Chapter 481
  - (4) Texas Health and Safety Code, Chapter 483
  - (5) Texas Occupations Code, Chapter 51
  - (6) Texas Occupations Code, Chapter 102
  - (7) Texas Occupations Code, Chapter 202
  - (8) 16 Texas Administrative Code, Chapter 60
  - (9) 25 Texas Administrative Code, Chapter 130
  - (10) 16 Texas Administrative Code, Chapter 601
- (b) In this section:
  - (1) "TAC" means Texas Administrative Code
  - (2) "TxHSC" means Texas Health and Safety Code

## (c) Class A Violations:

Penalty Range:	
\$500 up to \$2,000	
Administrative Violations	
Failed to provide the Department with practice name, corporate/trade name or assumed name to identify an individual or group with which the podiatric physician is practicing	130.50(e)
Failed to notify the Department of any change(s) of licensee's practice name, corporate/trade name or assumed name or address	130.50(e)
Failed to notify the Department of any change of address or phone number(s) for each practitioner's location(s) no later than ten (10) business days after the change is made	130.52(c)
Hyperbaric oxygen certificate holder failed to notify Department of any address change or change of hospital setting no later than ten (10) business days after the change is made	130.47(c)
Nitrous Oxide/Oxygen Inhalation registrant failed to notify Department of any address change no later than ten (10) business days after the change is made	130.48(h)
Podiatric medical radiological technician registrant failed to notify the Department of any change of address or change of supervising podiatric physician within two (2) weeks	130.53(k)
Posting and Public Information Violations	
Failed to conspicuously display both the license and an unexpired renewal certificate at the location where the person practices	202.262
Failed to clearly display the hyperbaric oxygen certificate in the office alongside the original license	130.47(d)
Failed to clearly display the nitrous oxide/oxygen inhalation registration permit in the office	130.48(i)
Failed to use only the authorized designation(s) to identify podiatric physician in any publication	130.50(a)
Failed to use only the authorized designation(s) to identify podiatric physician's practice in any publication	130.50(b)
Failed to submit publication for department approval utilizing any other designation	130.51(c)
Failed to conspicuously and prominently display in a location to be seen by all patients a department-identified sign or provide all patients and consumers a brochure with the name, mailing address, and the number of the department and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the department	130.70(a)(b)
Advertising Without a License or Accreditation Violations	
Advertised or used terms or letters directly or by implication that a podiatry service will be provided without a license	202.001(3); 202.251; 202.253(a-1)(6); 202.5015
Publication failed to identify each podiatrist by name and professional identification when practicing in a group of practitioners from different branches of the healing arts	130.50(g)
Failed to properly advertise or publish the name of any board certification held by podiatric physician	130.51(e)
Listed in any advertisement or public communication any certifying board not approved or recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association	130.51(f)

## (d) Class B Violations:

Penalty Range:	
\$1,000 up to \$3,000 and/or up to 1-year probated suspension	
Advertising Violations	
Used or participated in the use of any publication containing false, misleading or deceptive statement or claim	130.51(a)
Failed to retain recordings, transcripts, or copies of all public communications by date of publication for two years after the communication is made	130.51(d)
Publication failed to include a specific and true statement of the limits, scope and specific purpose of the technique or device when publication mentions a particular surgical technique or device	130.51(g)
Health and Safety Violations	
Failed to maintain nitrous oxide gas machines as required	130.48(l)
Failed to have nitrous oxide machine service check on a three-year basis	130.48(m)(4)
Failed to have a method of locking the nitrous oxide tanks after business hours	130.48(m)(5)
Failed to have the minimum amount of treatment equipment and facilities in medical office(s) to provide the usual and customary podiatric services	130.52(a)

Failed to have medical office adequately staffed and equipped to ensure treatment is timely and properly administered	130.52(b)
<b>Administrative Violations Related to Temporary Residency Licensees</b>	
Residency Director failed to ensure temporary residency licensees have read and understood the Act and Rules governing the practice of podiatric medicine	130.31(b)(2)
Residency Director failed to report a list of all residents enrolled in each program and the names of all the residents in the program within thirty (30) days after start date of the program each year	130.31(c)
<b>Administrative Violations</b>	
Failed to file a current certificate of inspection of the nitrous oxide gas machine with the Department	130.48(f)
Failed to maintain documentation for employees who assist in the nitrous oxide/oxygen inhalation conscious sedation procedure of training in basic life support and their annual reviews of emergency protocols, contents/use of emergency equipment and basic cardiopulmonary resuscitation	130.48(j)
Failed to ensure course providers for podiatric medical radiological technician(s) are approved by the Texas Medical Board	130.53(c)
<b>Unlicensed Activity</b>	
Practiced, attempted, offered to practice podiatry with an expired license	202.303; 60.31(g)
Practiced, attempted, offered to practice residency podiatry as a temporary residency licensee with an expired license.	130.31(d); 130.31(f); 60.31(g)
Sponsor permitted provisional licensee to engage in the unauthorized practice of podiatric medicine while provisional license was expired	130.43(d)

(e) Class C Violations:

<b>Penalty Range:</b>	
\$2,000 up to \$5,000 and/or 1-year probated suspension up to revocation	
<b>Administrative Violations</b>	
Altered a license, certificate, diploma, or transcript	202.253(a-1)(9); 202.5015
Used a podiatry degree, license, certificate, diploma, or a transcript of a license, certificate, or diploma, that has been fraudulently purchased, issued, counterfeited, or materially altered	202.253(a-1)(10); 202.5015
Used or allowed a person to use a license or registration for any fraudulent, misleading or deceptive purpose	202.253(a-1)(12); 202.5015
Failed to cooperate with the Department inspector in the performance of the inspection	202.602
Failed or refused to provide acceptable documentation of continuing education records for renewal	130.44(i)
Failed to inform the patient as to the fees to be charged for services before services are performed or, in extended care cases, a fair and reasonable estimate of what the fee will be and basis on which the fee will be determined	130.55(e)
Practitioner improperly received or tendered a commission for a referral or failed to disclose any affiliation or remuneration that will be received for a referral	130.55(f); Tex. Occ. Code Chapter 102
Failed to report a professional liability claim or complaint to the department within thirty (30) days, as required	130.70(c), (d), (e), (f)
Failed to cooperate with the Department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the Department	130.55(c)
<b>Records Violations</b>	
Residency Director failed to ensure the temporary residency licensee read and understood the Act and Rules governing the practice of podiatric medicine	130.31(b)(2)
Practitioner failed to make, maintain, and keep accurate records of the diagnosis made and the treatment performed for five years following the completion of treatment	130.54(a)
Practitioner failed to provide requested copies of medical records or a summary or narrative of the records within thirty (30) days after the date of the request	130.54(d)
Failed to comply with the Texas Medical Records Privacy Act	TxHSC 181
<b>Standard of Care Violations – Related to Supervision</b>	
Residency Director failed to ensure the temporary residency licensee is practicing within the scope of the GPME program	130.31(b)(1);
Residency Director failed to ensure temporary residency licensees are properly	130.31(b)(3)

licensed prior to participation in the GPME program	
Failed to continuously supervise the conscious sedation of a patient by nitrous oxide. Nitrous oxide flowing when the practitioner is not present in the patient room.	130.48(c)
Supervising podiatrist failed to verify out of classroom training hours for podiatric medical radiological technician(s)	130.53(e)
Supervising practitioner failed to be physically present on the premises while podiatric medical radiological technician registrant performed radiological procedures	130.53(g)
Podiatric medical radiological technician registrant performed radiological procedures without a supervising podiatrist physically present on the premises	130.53(g)
Standard of Care Violations – Related to Treatment	
Temporary residency licensee prescribed controlled substance(s) for purpose(s) outside the approved residency program	130.31(g)
Failed to evaluate and document patient health and medical status in the record prior to nitrous oxide/oxygen inhalation conscious sedation procedure	130.48(k)
Failed to properly administer nitrous oxide/oxygen inhalation conscious sedation procedure as required	130.48(m)(1)-(4)
Practitioner abandoned patient that was undertaken to treat	130.55(b)
Practitioner failed to inform the patient of the identity of the surgeon to be performing podiatric medical surgery prior to surgery	130.55(d)
Performed an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of others' rights	130.55
Failed to inform patient in advance of beginning treatment of the nature and extent of treatment needed (Informed consent)	130.55(e); 25 TAC 601
Delegated a medical act to an unqualified and untrained individual	130.56(a)
Performed an act or omission constituting malpractice/negligence by failing to perform services or provide products for which compensation has been received or failed to perform services or provide products with reasonable care, skill, expedience, and faithfulness	130.55; 202.253(a-1)(15); 202.5015
Billed for improper, unreasonable, or unnecessary services or services that were not provided	202.253(a-1)(4); 202.5015; TxHSC 311.0025(a)
Performed an act or omission constituting malpractice/negligence by failing to do that which a person or ordinary prudence would have done or would not have done under the same or similar circumstances	130.55; 202.253(a-1)(16); 202.5015
Failed to comply with standards for prescribing controlled substances	TxHSC Chapter 481; 130.58
Failed to comply with standards for prescribing dangerous drugs	TxHSC Chapter 483; 130.58
Misrepresentation	
Provided false or misleading information to the Department regarding a Department inquiry of continuing medical education	130.44(j)
Placed or caused to be placed false, misleading or deceptive advertising	130.51(a); 202.253(a-1)(6); 202.5015
Advertised professional superiority or the performance of professional service in a superior manner	202.253(a-1)(7); 202.5015
Used or participated in the use of any publication, including advertisements, new stories, press releases and periodical articles that contain a false, misleading or deceptive claims/statements	130.51(a)
Made or allowed false, misleading or deceptive representations concerning services or products provided or to be provided	130.51(b)
Forged, altered or falsified a physician's or healthcare professional's order or prescription	481.129
Other fraud or deceit concerning services provided	202.253(a-1)(4); 202.5015
Unlicensed Activity	
Temporary residency licensee practicing podiatric medicine outside the scope and limits of the GPME program and/or without supervision.	130.30(c)(e); 130.31(e)
Used nitrous oxide/oxygen inhalation conscious sedation on a patient without a current registration	130.48(d)
Provisional licensee violated Act and/or Rules	130.43(g)
Practicing podiatry while a license is on inactive status	130.46(b)
Supervised and/or administered hyperbaric oxygen without a current certificate	130.47
Failed to ensure individuals performing radiological procedures on the foot are properly trained and are properly registered as a podiatric medical radiological technician	130.53(b)

Podiatric medical radiological technician performed podiatric radiological procedures without a registration	130.53(f)
<b>Unprofessional or Unethical Conduct – Podiatric Medical Radiological Technicians</b>	
Podiatric medical radiological technician registrant performed dangerous or hazardous procedures as identified by the Texas Medical Board	130.53(h)
Podiatric medical radiological technician failed to comply with the safety rules of the Texas Department of State Health Services Radiation Control Program	130.53(i)
Podiatric medical radiological technician obtained, or attempted to obtain or use a registration by bribery or fraud	130.53(l)(4)
Podiatric medical radiological technician engaged in unprofessional conduct, including but not limited to, conviction of a crime, commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care, and commission of an act of moral turpitude	130.53(l)(5)
Podiatric medical radiological technician developed or has an incapacity that prevents the practice of podiatric medical radiological technician with reasonable skill, competence, and safety to the public as a result of (A) an illness; (B) drug or alcohol dependency; or habitual use of drug or intoxicating liquors or (C) another physical or mental condition	130.53(l)(6)
Podiatric medical radiological technician failed to practice in an acceptable manner consistent with public health and welfare	130.53(l)(7)
Podiatric medical radiological technician has disciplinary action taken against a radiological certification, permit, or registration in another state or by another regulatory agency	130.53(l)(8)
Podiatric medical radiological technician engaged in acts requiring registration under these rules without a current registration in another state, or by another regulatory agency	130.53(l)(9)
Podiatric medical radiological technician has had a registration revoked, suspended, or has received a disciplinary action	130.53(l)(10)
<b>Unprofessional or Unethical Conduct</b>	
Engaged in habits of intemperance or drug addiction that endangered the health, well-being, or welfare of the patients	202.253(a-1)(3); 202.5015
Engaged in grossly unprofessional or dishonorable conduct to deceive or defraud the public	202.253(a-1)(4); 202.5015
Violated or attempted to violate the laws or rules as a principal, accessory, or accomplice	202.253(a-1)(5); 202.5015
Employed or associated in the practice of a podiatrist whose license has been suspended or revoked	202.253(a-1)(13); 202.5015
Failed to practice podiatry in an acceptable manner consistent with public health and welfare	202.253(a-1)(16); 202.5015
Failed to comply with prohibitions relating to sexual misconduct	130.57

(f) Class D Violations:

<b>Penalty Range:</b>	
\$5,000 and/or revocation	
Practiced podiatry without a license	202.303
Obtained or attempted to obtain a license by fraud, misrepresentation, or concealment of material fact	60.23(a)(1); 60.23(a)(2); 202.253(a-1)(1); 202.253(a-1)(8); 202.253(a-1)(14); 202.5015
Engaged in fraud or deception in the passing or taking an examination	60.52(a); 202.253(a-1)(1); 130.41(c); 202.253(a-1)(11); 202.5015
Failed to comply with a previous order of the Commission or Executive Director	51.353(a); 202.253(a); 202.5015
Failed to pay the Department for a dishonored payment or processing fee	60.82; 51.210(c)