

ENGROSSED HOUSE  
BILL NO. 2981

By: Bastin of the House  
and  
Herbert of the Senate

An Act relating to professions and occupations;  
amending 59 O.S. 1991, Sections 139, 147, as  
amended by Section 11, Chapter 150, O.S.L. 1993,  
148, as amended by Section 12, Chapter 150, O.S.L.  
1993, 149 and 155 (59 O.S. Supp. 1995, Sections 147  
and 148), which relate to the Board of Podiatric  
Medical Examiners; providing for organization;  
providing time for election of officers; providing  
for duties; providing for meetings; providing  
certain compliance; providing for degree of proof;  
specifying penalties; modifying and removing  
certain grounds for penalties; providing for  
judicial review; providing for establishment of  
certain guidelines; providing for confidential  
letters for certain violations; removing outdated  
language relating to administrative procedures;  
clarifying language; creating a review panel for  
certain complaints; providing for duties and  
certain limitations; providing powers and duties;  
providing for procedures; specifying certain  
exclusions; requiring a finding; specifying  
contents; authorizing settlement agreements;  
specifying certain requirements for acceptance;  
providing for use; requiring certain review and

approval; modifying powers and duties of the Board of Podiatric Medical Examiners; repealing 59 O.S. 1991, Section 150, which relates to stenographic report of revocation proceedings; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 139, is amended to read as follows:

Section 139. A. The Board of Podiatric Medical Examiners shall ~~hold a regular meeting each year in September for transacting such business as properly comes before it. Upon call by any two of its members, it may hold special meetings at any time for transacting any business. It may meet at such times and places in this state as are agreeable to it. It may adjourn any meeting as it determines and meet again at the time or times it appoints. As it determines, it shall~~ organize annually at the last regularly scheduled meeting of the Board before the beginning of the next fiscal year by electing from among its members a president, a vice-president, and a secretary-treasurer. ~~In addition to the duties usually incumbent upon his or her office, each such officer shall perform at all times all duties authorized as to his or her office by the applicable laws and the rules and regulations. Each shall serve in the office to which elected until the close of the September meeting~~ The term of each officer shall be for the following his or her election fiscal year and until ~~his or her~~ a successor is elected, ~~unless the office be vacated sooner by the Board or by removal from membership upon the Board by the Governor; provided that, any such officer may~~

resign at any time and qualified. The duties of each officer shall be prescribed in the rules of the Board.

B. The Board may hold such regularly scheduled meetings, special meetings, emergency meetings, or continued or reconvened meetings as found by the Board to be expedient or necessary. The In the absence of the president, and in his or her absence the vice-president, shall preside at all meetings. A majority of the Board shall constitute a quorum ~~and have power to act.~~

C. The Board shall act in accordance with the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open Records Act, and the Administrative Procedures Act.

D. All members of the Board and such employees as determined by the Board shall be bonded as required by Sections 85.26 through 85.31 of Title 74 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 147, as amended by Section 11, Chapter 150, O.S.L. 1993 (59 O.S. Supp. 1995, Section 147), is amended to read as follows:

Section 147. A. The Board of Podiatric Medical Examiners is authorized, after notice and opportunity for a hearing, pursuant to Article II of the Administrative Procedures Act, to issue an order ~~suspending,~~ imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a podiatric physician has committed any of the acts or occurrences set forth in Section 148 of this title:

1. Disapproval of an application for a renewal license;
2. Suspension of a license issued by the Board for a period not exceeding three (3) years, ~~any;~~
3. Revocation of a license to practice podiatric medicine heretofore issued and remaining effective under the provisions of this act or hereafter issued under the applicable laws for any one or more of the grounds or causes provided for revocation of such a license, as specified in Section 148 of this title by the Board;

4. Imposition of an administrative penalty not to exceed One Thousand Dollars (\$1,000.00) for each count or separate offense;

5. Issuance of a censure or reprimand;

6. Placement on probation for a period of time and under such terms and conditions as deemed appropriate by the Board, including requiring the podiatric physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another podiatric physician;

7. Restriction of the practice of a podiatric physician under such terms and conditions as deemed appropriate by the Board; and

8. Payment of costs associated with a disciplinary proceeding.

B. A podiatric physician against whom a penalty is imposed by an order of the Board pursuant to the provisions of this section shall have the right to seek a judicial review of such order pursuant to Article II of the Administrative Procedures Act.

C. The Board may by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum administrative penalties, periods of probation or supervision, conditions of probation, or conditions for the reinstatement of a license.

D. The Board is authorized to issue a confidential letter of concern to a podiatric physician when, though evidence does not warrant formal proceedings, the Board has noted indications of possible errant conduct by the podiatric physician that could lead to serious consequences and formal action.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 148, as amended by Section 12, Chapter 150, O.S.L. 1993 (59 O.S. Supp. 1995, Section 148), is amended to read as follows:

Section 148. A. The following acts or occurrences by a podiatric physician shall constitute grounds for which the penalties specified in Section 147 of this title may be imposed by order of

~~the Board of Podiatric Medical Examiners is authorized, after notice and opportunity for a hearing, pursuant to Article II of the Administrative Procedures Act, to issue an order revoking any license to practice podiatric medicine heretofore issued and remaining effective under the provisions of this act or hereafter issued under the applicable laws for any one or more of the following causes:~~

1. ~~The willful~~ Willfully and ~~fraudulent~~ fraudulently making ~~by the licensee to the Board of~~ any false and material statement to the Board, either before or after the issuance of the license;

2. ~~Final conviction of the licensee in any court of any crime Pleading guilty or nolo contendere to, or being convicted of, a felony, a misdemeanor involving moral turpitude, or of any felony a violation of federal or state controlled dangerous substances laws;~~

3. ~~The use by the licensee~~ Use of alcohol, any stimulant, any drug, or any substance which impairs intellect, judgment, or physical ability to such an extent ~~as to incapacitate that the licensee to such a degree that he is unable to perform his professional duties~~ practice podiatric medicine with safety and benefit to the public;

4. Mental or physical weakness or inability which incapacitates the licensee to such a degree that ~~he~~ the licensee is unable to ~~perform his professional duties~~ practice podiatric medicine with safety and benefit to the public;

5. ~~Any advertising~~ Making any advertisement, statement, or representation ~~made by the licensee,~~ which is untrue or improbable and calculated by the licensee to deceive, defraud or mislead the public or patients, actual or prospective, ~~or to mislead both;~~

6. Practicing fraud by omission or commission ~~by the licensee~~ in the examination given by the Board, or in obtaining a license, or in obtaining renewal or reinstatement of a license;

7. ~~Failure or neglect by the licensee~~ Failing to pay or cause to be paid promptly when due any license fee ~~or renewal fee~~ required by the ~~applicable laws~~ Podiatric Medicine Practice Act or the rules of the Board, ~~as the case may be;~~

8. ~~Willful failure~~ Failing or ~~neglect by the licensee~~ neglecting to employ antiseptic methods in his practice, or to ~~de~~ provide reasonable ~~sterilizing~~ sterilization as needed for ~~protecting~~ the protection of a patient;

9. Performing, or attempting to perform, any surgery ~~as to~~ for which he has not had reasonable training;

10. Gross and willful neglect of duty as a member or officer of the Board;

11. ~~Any act or omission by the licensee made unlawful by the applicable laws, regardless of whether the licensee shall have been convicted thereof in any court;~~

12. ~~Final conviction of the licensee in any court of any violation of the applicable laws;~~

13. ~~Advertising, or representing in any other way, by the licensee which is grossly untrue or improbable;~~

14. ~~Grossly dishonorable conduct on the part of the licensee;~~

15. ~~Dividing by the licensee~~ with any other person or with any partnership, association, trust, corporation, or firm, in any proportion, of any fee, gift, compensation, or other award for services as a podiatric physician, except with:

a. another licensed podiatric physician ~~or with,~~

b. an applicant for a license who is observing or assisting the licensee as an intern, preceptee or resident, as authorized by the rules of the Board, or ~~with~~

c. a practitioner of a healing art duly licensed under the laws of this state or some other state ~~or,~~ district or territory under the jurisdiction of the

United States of America who actually shares in the ~~service~~ services or in the responsibility attending the ~~service~~ services or at the time of the ~~service~~ services is an active associate of the licensee in the lawful practice of podiatric medicine in this state; and

~~16. Any act or omission on the part of the licensee which is contrary to or in derogation of 12. Violating or attempting to violate the provisions of the Podiatric Medicine Practice Act, the Code of Ethics; and~~

~~17. Any willful violation of or the rules of the Board.~~

B. ~~Proof before the Board to its satisfaction of commitment under the laws of this or any other such state, district, or territory of a licensee to any Commitment of a licensee to an institution for the insane or feeble-minded, mentally ill shall constitute prima facie ~~proof to the Board~~ evidence of mental weakness or inability which incapacitates the licensee to such a degree that ~~he~~ the licensee is unable to ~~perform his professional duties~~ practice podiatric medicine with safety and benefit to the public.~~

SECTION 4. AMENDATORY 59 O.S. 1991, Section 149, is amended to read as follows:

Section 149. ~~Charge or charges for suspension or revocation of license shall be in writing and filed with the secretary-treasurer~~  
A. Any person may file a written and signed complaint with the Board of Podiatric Medical Examiners, alleging that a podiatric physician has violated the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board, and may be made by anyone; and no license shall be suspended or revoked until (1) a copy of the charge or charges, shall have been sent to the licensee by registered mail to the last post office address of the licensee appearing upon the license record of the Board or

~~delivered to the licensee in person, and (2) the licensee is notified in similar way of the time and place when and where the Board will commence its hearing of the charge or charges, and (3) the Board publicly hears the charge or charges and allows the licensee reasonable opportunity to appear in person or by counsel or in both such ways and to present evidence in refutation of the charge or charges. Such notice shall be issued by any member of the Board and shall be so given to the licensee at least twenty (20) days before commencement of the hearing. Whether or not the licensee appears, the Board may proceed and determine the truthfulness or untruthfulness of the charge or charges; and if, upon such hearing, the Board shall determine the charge or charges to be true wholly or in substantial part, and if under the applicable laws the license may, and in the opinion of the Board should, be suspended or revoked upon the evidence adduced, the Board shall determine which, and if the determination be for suspension shall determine also the duration of the suspension, and as it determines, the Board by its written order shall revoke the license or suspend it for a specified time, not to exceed three (3) years, or adjudge that the evidence presented upon the hearing is insufficient to justify suspension or revocation. If the Board shall determine that the charge or charges themselves if true are insufficient to justify suspension or revocation, it shall so order and withhold further proceeding thereon except to dismiss the same. The Board may continue the hearing from time to time as it determines. Suspension shall, during the period of the suspension, and revocation shall, permanently, take from the licensee all rights and privileges acquired by the license the facts upon which the allegations are based. The complaint shall be directed by the president of the Board to two specific Board members for review.~~

B. The Board members who review a complaint shall constitute a review panel. A review panel may conduct or cause to be conducted

any additional investigation of the allegations in the complaint as it reasonably determines may be needed to establish, based on the evidence available to the panel, whether it is more likely than not that:

1. A violation of the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board has occurred; and

2. The podiatric physician named in the complaint has committed the violation.

C. In conducting its investigation, a review panel may seek evidence, take statements, take and hear evidence, and administer oaths and affirmations. A review panel may also use Board attorneys and investigators appointed by the Board to seek evidence.

D. Upon a review panel finding, based on the evidence available to the panel, that it is more likely than not that a violation of the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board has occurred, that the podiatric physician named in the complaint has more likely than not committed the violation, and that there is sufficient evidence in the possession of the review panel to support a recommendation, the review panel may then recommend in writing to the Board that the Board initiate an individual proceeding, pursuant to Article II of the Administrative Procedures Act, against the podiatric physician named in the complaint. The members of the review panel shall be excluded from participating as Board members in an individual proceeding initiated by the Board based upon their recommendation.

E. The review panel may elect not to recommend that the Board initiate an individual proceeding against the podiatric physician named in the complaint and may secure a settlement agreement that the podiatric physician will not violate the provisions of the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board in the future. A settlement agreement must be stated in

writing and may take any form satisfactory to the review panel and the podiatric physician involved. When a settlement agreement is entered into, it shall remain part of the investigation file and may be used against the podiatric physician involved only if the podiatric physician involved violates the settlement agreement. Informal resolution of complaints is encouraged. Any settlement agreement made by a review panel must receive final review and approval by the Board. A review panel may act without complying with the Oklahoma Open Meeting Act.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 155, is amended to read as follows:

Section 155. ~~Said~~ The Board is hereby authorized to hold and conduct of Podiatric Medical Examiners shall:

1. Conduct investigations and hearings and determine any charge or charges for revocation or suspension of any license issued by said of complaints against podiatric physicians filed with the Board, pursuant to Section 149 of this title; and ~~for~~

2. Initiate and conduct individual proceedings, pursuant to Article II of the Administrative Procedures Act, against podiatric physicians alleged to have violated the Podiatric Medicine Practice Act, the Code of Ethics, or the rules of the Board. For such purposes said Board, or any member thereof, is hereby empowered to issue subpoenas, compel the attendance of witnesses, and administer oaths and affirmations. Subpoenas authorized by this act section may be signed and issued by any member of said the Board, and shall be served, and return of service thereof made, in the same manner as a subpoena is served out of a court of record in this state and as return in such case is made. If a person fails and refuses to attend in obedience to such subpoena, or refuses to be sworn or examined or answer any question propounded by any member of said the Board or any attorney or licensee upon permission from said the Board, such person shall be guilty of a misdemeanor and punishable

as such, upon conviction. ~~All resolutions, findings, decisions and orders of said Board, and minutes of all its meetings, shall be reduced to writing and recorded in a record to be kept by the secretary-treasurer of said Board for that purpose. Said secretary-treasurer shall keep complete records of all monies received by him as secretary-treasurer.~~

SECTION 6. REPEALER 59 O.S. 1991, Section 150, is hereby repealed.

SECTION 7. This act shall become effective November 1, 1996.

Passed the House of Representatives the 27th day of February, 1996.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1996.

President of the Senate