

Department of Health  
Rulemaking Hearing Rules  
Board of Registration in Podiatry  
Division of Health Related Boards

Chapter 1155-2  
General Rules and Regulations Governing the Practice of Podiatry

Amendments

Rule 1155-2-.02, Scope of Practice, is amended by adding the following language as paragraph (4):

- (4) A licensed podiatrist may order diagnostic tests from licensed medical laboratories and may receive results of such tests, provided the need for such tests is relevant to the practice of podiatry.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, and 63-3-106.

Rule 1155-2-.04, Qualifications for Licensure, is amended by deleting subparagraph (1) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (f) shall read:

- (1) (f) Successfully complete the jurisprudence examination pursuant to rule 1155-2-08.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-111, 63-3-113.

Rule 1155-2-.08, Examinations, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (5) (b) and renumbering the remaining subparagraph accordingly, so that as amended, the new paragraph (3) and the new subparagraph (5) (b) shall read:

- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
  - (a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence examination from the Board's Internet web page that can be accessed at [www.Tennessee.gov/health](http://www.Tennessee.gov/health).
  - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.
  - (c) There is no fee for the jurisprudence examination.

- (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of podiatry (T.C.A. §§ 63-3-101, et seq., and Chapter 1155-2 of the Official Compilation, Rules and Regulations of the State of Tennessee) and the American Podiatric Medical Association (APMA) Code of Ethics. Copies of the applicable statutes, regulations, and the APMA Code of Ethics are available upon request from the Board's administrative office.
  - (e) The format of the examination shall be "open-book."
  - (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
- (5) (b) Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-111.

Rule 1155-2-.12, Continuing Education, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care. If the licensee is performing ankle surgery pursuant to T.C.A. § 63-3-101 (b) (1), ten (10) of these twelve (12) hours shall pertain to the ankle surgery.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-101, 63-3-106, and 63-3-116.

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## New Rule

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1155-2-.22 Advertising

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- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning podiatric, orthotic, prosthetic, or pedorthic services, the importance of the interests affected by the choice of a health care provider regulated by the Board and the foreseeable consequences of unrestricted advertising by health care providers regulated by the Board which is recognized to pose special possibilities for deception, require that special care be taken by health care providers regulated by the Board to avoid misleading the public. The health care providers regulated by the Board must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by health care providers regulated by the Board is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
  - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a podiatrist, orthotist, prosthetist or pedorthist who is licensed to practice in Tennessee.
  - (b) Licensee - Any person holding a license to practice podiatry, orthotics, prosthetics, or pedorthics in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
  - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of podiatrists, orthotists,

prosthetists or pedorthists to serve his or her particular needs.

- (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
- (e) Discounted Fee - Shall mean a fee offered or charged by a person for a product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".

(3) Advertising Fees and Services

(a) Fixed Fees

1. Fixed fees may be advertised for any service.
2. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.

(b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee.

(c) Discount Fees. Discount fees may be advertised if:

1. The discount fee is lower than the licensee's customary or usual fee charged for the service; and
2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.

(d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.

(e) Time Period of Advertised Fees.

1. Advertised fees shall be honored during the entire time period stated in the advertisement.
  2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the advertisement's last date of publication or until the next scheduled publication, whichever is later.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct pursuant to Rule 1155-2-.13, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-3-119 (a) (16):
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
  - (b) The misleading use of an unearned or non-health degree in any advertisement.
  - (c) Failure to include in the advertisement the certifying board of the podiatrist, orthotist, prosthetist or pedorthist if the licensee claims to be certified.
  - (d) Failure to include in the advertisement the terms "podiatry," "podiatrist," "D.P.M.," "orthotist," "orthotics," "prosthetist," "prosthetics," "pedorthics" or "pedorthist" along with the licensee's name when the licensee is an individual, or failure to include in the advertisement that the profession pertaining to the services being offered is podiatry, orthotics, prosthetics, or pedorthics when the practitioner is a licensee.
  - (e) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.
  - (f) Any appeals to an individual's anxiety in an excessive or unfair manner.
  - (g) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.

- (h) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (i) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (j) Any misrepresentation of a material fact.
- (k) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (l) Statements concerning the benefits or other attributes of podiatric, orthotic, prosthetic, or pedorthic procedures or products that involve significant risks without including:
  - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
  - 2. The availability of alternatives; and
  - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (m) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (n) The use of "bait and switch" advertisements.
- (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement.
- (q) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This subparagraph shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.

- (r) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
  - (s) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
  - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
  - (c) A recording and/or copy of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast, posting or publication and be made available for review upon request by the Board or its designee.
  - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the applicability or invalidity of any section, clause, sentence or part in any instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, and 63-3-119.

Legal Contact: Nicole Armstrong, Assistant General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120, (615) 741-1611.

Contact for disk acquisition and/or party who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

Signature of the agency officer of officers directly responsible for proposing and/or drafting these rules:

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Donald R. Skwor, D.P.M., Chair  
Board of Registration in Podiatry

The roll call vote by the Board of Registration in Podiatry on these rulemaking hearing rules was as follows:

Board Members	Aye	No	Abstain	Absent
Donald R. Skwor, D.P.M.	<u>X</u>	_____	_____	_____
David Long, D.P.M.	<u>X</u>	_____	_____	_____
Aaron Perkins, D.P.M.	<u>X</u>	_____	_____	_____
Berkeley Nicholls, D.P.M.	<u>X</u>	_____	_____	_____
Shannon Bottoms	_____	_____	_____	<u>X</u>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Registration in Podiatry on the 24th day of February, 2005.

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been

filed in the Department of State on the 19th day of August, 2004, and such notice of rulemaking hearing has been published in the September 15, 2004, issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 15th day of December, 2004.

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Robbie H. Bell, Director  
Division of Health Related Boards

Subscribed and sworn to before me this the 24th day of February, 2005.

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Notary Public

My commission expires on the 25<sup>th</sup> day of March, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

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Paul G. Summers  
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 26th day of April, 2006, and will become effective on the 10th day of July, 2006.