

CHAPTER 461

PODIATRY

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461.001 Legislative findings; intent; scope.—The Legislature finds that the practice of podiatric medicine by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about podiatrists and that the consequences of a wrong choice could seriously endanger their health and safety. The sole legislative purpose for enacting this chapter is to ensure that every podiatrist practicing in this state meet minimum requirements for safe practice. It is the legislative intent that podiatrists who fall below minimum competency or who otherwise present a danger to the public health be prohibited from practicing in this state.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 1, 12, 13, ch. 86-71; s. 4, ch. 91-429.

461.002 Exceptions.—

(1) The provisions of this chapter shall not apply to other duly licensed health care practitioners acting within their authorized scope of practice.

(2) This chapter shall not prohibit the manufacture, advertisement, or sale of proprietary corrective shoes, foot appliances, or remedies.

(3) This chapter shall not apply to the practice of podiatric medicine by graduate podiatrists in the United States Army, Air Force, Marines, Navy, Public Health Service, Coast Guard, or United States Department of Veterans Affairs in the discharge of their official duties.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 2, 12, 13, ch. 86-71; s. 4, ch. 91-429; s. 21, ch. 93-268.

461.003 Definitions.—As used in this chapter:

(1) "Department" means the Department of Business and Professional Regulation.

(2) "Board" means the Board of Podiatric Medicine as created in this chapter.

(3) "Practice of podiatric medicine" means the diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot and leg. The surgical treatment of ailments of the human foot and leg shall be limited anatomically to that part below the ante-

rior tibial tubercle. The practice of podiatric medicine shall include the amputation of the toes or other parts of the foot but shall not include the amputation of the foot or leg in its entirety. A podiatrist may prescribe drugs that relate specifically to the scope of practice authorized herein.

(4) "Podiatrist" means any person licensed to practice podiatric medicine pursuant to this chapter.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 3, 12, 13, ch. 86-71; s. 4, ch. 91-429; s. 116, ch. 94-218.

461.004 Board of Podiatric Medicine; membership; appointment; terms.—

(1) The Board of Podiatric Medicine is created within the department and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed podiatrists who are residents of the state and who have been licensed podiatrists engaged in the practice of podiatric medicine for at least 4 years. The remaining two members must be residents of the state who are not, and have never been, licensed as podiatrists or members of any closely related profession. At least one member of the board must be 60 years of age or older.

(3) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed.

(4) All provisions of chapter 455 relating to the board shall apply. However, notwithstanding the requirement of s. 455.225(4) that the board provide by rule for the determination of probable cause by a panel composed of its members or by the department, the board may provide by rule that its probable cause panel may be composed of one current member of the board and one past member of the board, as long as the past member is a licensed podiatrist in good standing. The past board member must be appointed to the panel by the chairman of the board with the approval of the secretary for a maximum of 2 years.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 4, 12, 13, ch. 86-71; s. 13, ch. 87-172; s. 1, ch. 90-29; s. 4, ch. 91-429; s. 117, ch. 94-218.

461.005 Authority to make rules.—The Board of Podiatric Medicine is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 5, 12, 13, ch. 86-71; s. 4, ch. 91-429.

461.006 Licensure by examination.—

(1) Any person desiring to be licensed as a podiatrist shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board not to exceed \$100 and an examination fee set by the board not to exceed \$350.

(b) Is at least 18 years of age.

(c) Has received a degree from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association. For applicants who matriculated prior to 1953, the course of study shall have been at least 3 years. For applicants who matriculated during or subsequent to 1953, the course of study shall be at least 4 years or the total hourly equivalent of a 4-year course of study.

(d) Has satisfactorily completed one of the following clinical experience requirements:

1. One year of residency in a residency program approved by the board.

2. One year of preceptorship under a preceptor approved by the board.

3. Five years of continuous, active licensed practice of podiatric medicine in another state immediately preceding the submission of the application and completion of at least the same continuing educational requirements during those 5 years as are required of podiatrists licensed in this state.

(e) Beginning October 1, 1995, has satisfactorily completed one of the following clinical experience requirements:

1. One year of residency in a residency program approved by the board.

2. Ten years of continuous, active licensed practice of podiatric medicine in another state immediately preceding the submission of the application and completion of at least the same continuing educational requirements during those 10 years as are required of podiatrists licensed in this state.

(2)(a) The department shall issue a license to practice podiatric medicine to any applicant who successfully completes the examination in accordance with this section.

(b) If an applicant fails to pass the examination in three attempts, he shall not be eligible for reexamination unless he completes additional educational requirements or training requirements prescribed by the board. An applicant who has completed the additional educational or training requirements prescribed by the board may take the examination on two more occasions. If the applicant has failed to pass the examination after five attempts, he is no longer eligible to take the examination.

(c) The department shall not issue a license to any applicant who is under investigation by any governmental entity for an offense which would constitute a violation of this act. Upon the completion of the investigation, the provisions of s. 461.013 shall apply.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 6, 12, 13, ch. 86-71; s. 2, ch. 90-29; s. 4, ch. 91-429.

Note.—Expired October 1, 1995, pursuant to s. 2, ch. 90-29.

461.007 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and a fee not to exceed \$350 set by the board.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board may by rule prescribe continuing education, not to exceed 40 hours biennially, as a condition

for renewal of a license. The criteria for such programs or courses shall be approved by the board.

History.—ss. 1, 6, ch. 79-229; s. 1, ch. 80-291; ss. 2, 3, ch. 81-318; ss. 7, 12, 13, ch. 86-71; s. 4, ch. 91-429; s. 169, ch. 94-119.

461.008 Inactive status.—

(1) The board shall adopt rules relating to application procedures for inactive status, to the renewal of inactive licenses, and to the reactivation of licenses. The board shall prescribe by rule an application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for the reactivation of a license. None of these fees may exceed the biennial renewal fee established by the board for an active license.

(2) The department may not reactivate a license unless the inactive or delinquent licensee has paid any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

History.—ss. 1, 6, ch. 79-229; s. 313, ch. 81-259; ss. 2, 3, ch. 81-318; s. 99, ch. 83-329; ss. 8, 12, 13, ch. 86-71; s. 4, ch. 91-429; s. 170, ch. 94-119.

461.009 Itemized patient billing.—

Whenever a podiatrist licensed under this chapter renders professional services to a patient, the podiatrist is required, upon request, to submit to the patient, to the patient's insurer, or to the administrative agency for any federal or state health program under which the patient is entitled to benefits, an itemized statement of the specific services rendered and the charge for each, no later than the podiatrist's next regular billing cycle which follows the fifth day after rendering of professional services. A podiatrist may not condition the furnishing of an itemized statement upon prior payment of the bill.

History.—s. 6, ch. 79-198; s. 2, ch. 81-318; ss. 12, 13, ch. 86-71; s. 4, ch. 91-429.

461.012 Violations and penalties.—

(1) Each of the following acts constitutes a violation of this chapter and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Practicing or attempting to practice podiatric medicine or advertising podiatric services without an active license or with a license fraudulently obtained.

(b) Using or attempting to use a license to practice podiatric medicine which has been suspended or revoked.

(2) Each of the following acts constitutes a violation of this chapter and is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Selling or fraudulently obtaining or furnishing any podiatry diploma, license, or record of registration or aiding or abetting in the same.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) Using the name or title "Podiatrist," "Doctor of Podiatry," or "Doctor of Podiatric Medicine" or using the phrase "foot clinic," "foot doctor," "quiropedista," or any other name, title, or phrase which would lead the public to believe that such person is engaging in the practice of podiatric medicine unless such person is licensed as a podiatrist in this state.

(d) Knowingly concealing any information relative to violations of this chapter.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 9, 12, 13, ch. 86-71; s. 88, ch. 91-224; s. 4, ch. 91-429.

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice podiatric medicine by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice podiatric medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of podiatric medicine or to the ability to practice podiatric medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, permitting, or advising any unlicensed person to practice podiatric medicine contrary to this chapter or to rule of the department or the board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed podiatrist.

(i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such report or records shall include only those which are signed in the capacity of a licensed podiatrist.

(j) Making misleading, deceptive, untrue, or fraudulent representations in the practice of podiatric medicine or employing a trick or scheme in the practice of podiatric medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the podiatric community.

(k) Soliciting patients either personally or through an agent, unless such solicitation falls into a category of solicitations approved by rule of the board.

(l) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, and test results.

(m) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(n) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in ss. 743.064, 766.103, and 768.13.

(o) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the podiatrist's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the podiatrist's professional practice, without regard to his intent.

(p) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the podiatrist to himself except those prescribed, dispensed, or administered to the podiatrist by another practitioner authorized to prescribe, dispense, or administer them.

(q) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to chapter 893.

(r) Being unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph the department shall, upon probable cause, have authority to compel a podiatrist to submit to a mental or physical examination by physicians designated by the department. Failure of a podiatrist to submit to such examination when directed shall constitute an admission of the allegations against him, unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A podiatrist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of podiatric medicine with reasonable skill and safety to patients.

(s) Gross or repeated malpractice or the failure to practice podiatric medicine at a level of care, skill, and treatment which is recognized by a reasonably prudent podiatrist as being acceptable under similar conditions and circumstances. The board shall give great weight to the standards for malpractice in s. 766.102 in interpreting this section. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the podiatrists. As used in this paragraph, "gross malpractice" or "the failure to practice podiatry with the level of care, skill, and treatment which is recognized by a reasonably prudent similar podiatrist as being acceptable under similar conditions and circumstances" shall not be construed so as to require more than one instance, event, or act.

(t) Performing any procedure or prescribing any therapy which, by the prevailing standards of podiatric medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent.

(u) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(v) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

(w) Violating any provision of this chapter or chapter 455, any rule of the board or department, or a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or department.

(x) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(y) Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. For the purposes of this subsection, the term "muscle building" does not include the treatment of injured muscle. A prescription written for any of the drug products listed above may be dispensed by the pharmacist with the presumption that the prescription is for legitimate medical use.

(z) Fraud, deceit, or misconduct in the practice of podiatric medicine.

(aa) Failing to report to the Division of Medical Quality Assurance any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the podiatrist knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part 1 of chapter 641, in which the podiatrist also provides services.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placing the podiatrist on probation for a period of time and subject to such conditions as the board may specify, including requiring the podiatrist to submit to treatment, to attend continuing education courses, to submit to reexamination, and to work under the supervision of another podiatrist.

(3) The department shall not reinstate the license of a podiatrist, or cause a license to be issued to a person the board has deemed unqualified, until such time as the board is satisfied that he has complied with all the terms and conditions set forth in the final order and that

such person is capable of safely engaging in the practice of podiatric medicine.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

(5)(a) Upon the department's receipt from an insurer or self-insurer of a report of a closed claim against a podiatrist pursuant to s. 627.912, or upon the receipt from a claimant of a presuit notice against a podiatrist pursuant to s. 766.106, the department shall review each report and determine whether it potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. However, if it is reported that a podiatrist has had three or more claims with indemnities exceeding \$25,000 each within the previous 5-year period, the department shall investigate the occurrences upon which the claims were based and determine if action by the department against the podiatrist is warranted.

(b) Upon the department's receipt from the Department of Health and Rehabilitative Services pursuant to s. 395.0197 of the name of the podiatrist whose conduct may constitute grounds for disciplinary action by the department, the department shall investigate the occurrences upon which the report was based and determine if action by the department against the podiatrist is warranted.

(6) When an investigation of a podiatrist is undertaken, the department shall promptly furnish to the podiatrist or his attorney a copy of the complaint or document which resulted in the initiation of the investigation. The podiatrist may submit a written response to the information contained in such complaint or document within 45 days after service to the podiatrist of the complaint or document. The podiatrist's written response shall be considered by the probable cause panel.

History.—ss. 1, 6, ch. 79-229; ss. 2, 3, ch. 81-318; s. 3, ch. 85-6; ss. 10, 12, 13, ch. 86-71; s. 39, ch. 88-1; s. 18, ch. 88-277; s. 5, ch. 90-44; s. 28, ch. 90-228; s. 65, ch. 91-220; s. 4, ch. 91-429; s. 42, ch. 92-149; s. 4, ch. 92-178; s. 85, ch. 92-289.

461.0134 Prescription or administration of dimethyl sulfoxide (DMSO); written release and information requirements.—

(1) No podiatrist licensed under this chapter shall be subject to disciplinary action by the board for prescribing or administering dimethyl sulfoxide (DMSO) to a patient under his care who has requested the substance as long as the podiatrist complies with the requirements of this section.

(2) The patient, after being fully informed as to alternative methods of treatment and their potential for cure and upon request for the administration of dimethyl sulfoxide (DMSO) by his podiatrist, shall sign a written release, releasing the podiatrist and, when applicable, the hospital or health facility from any liability therefor.

(3) The podiatrist shall inform the patient in writing if dimethyl sulfoxide (DMSO) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health and Human Services for the disorder for which it is being prescribed.

History.—ss. 5, 6, ch. 81-36; ss. 2, 3, 4, ch. 85-217; s. 13, ch. 86-71; s. 4, ch. 91-429.

461.014 Residency.—The board shall encourage and develop podiatric residency programs in hospitals in this state and shall establish such programs by the promulgation of rules, subject to the following conditions:

(1) Any residency program shall be approved by the Council of Podiatry Education of the American Podiatry Association.

(2) A residency program may be established only at a hospital where a duly licensed podiatrist is on the hospital staff or is otherwise in a supervisory position.

(3) Every resident shall register with the board through the submission of forms provided by the board, which forms shall, besides other required information, reflect the date of commencement of residency.

(4) Every hospital having a residency program shall semiannually, on January 1 and July 1 of each year, pro-

vide the board with a list of podiatric residents and such other information as is required by the board.

(5) No program in residency shall allow a resident to continue as such, unlicensed, for an aggregate period of time in excess of 2 years.

History.—s. 1, ch. 80-111; s. 314, ch. 81-259; s. 2, ch. 81-318; ss. 12, 13, ch. 86-71; s. 4, ch. 91-429.

461.015 Saving clauses.—

(1) No judicial or administrative proceeding pending on July 1, 1979, shall be abated as a result of the repeal and reenactment of this chapter.

(2) Each podiatrist who is duly licensed on June 30, 1979, shall be entitled to hold such license. Henceforth, such license shall be renewed in accordance with the provisions of this act.

History.—ss. 4, 5, 6, ch. 79-229; ss. 2, 3, ch. 81-318; ss. 12, 13, ch. 86-71; s. 4, ch. 91-429.