



The Newsletter of the Colorado Podiatry Board
Volume 3, Number 1, March 2005

FootNotes

State of Colorado Bill Owens, Governor
Department of Regulatory Agencies Tambor Williams, Executive Director
Division of Registrations Rosemary McCool, Director

The Board Enacts New Rules

by Lisa Sullivan, DPM, President, Colorado Podiatry Board

This year brought about a number of rule changes, the most predominant change occurring with the adoption of Rule 290. It is important that you read Dr. Hartlove's article on Rule 290 (below), as it describes the evolution of podiatric practice and the efforts of the Board and the podiatric community to reach consensus. I know many of you became involved in drafting this rule, which was greatly appreciated. Those involved also became more aware of the goals of the Podiatry Board and its primary function to protect the public by interpreting and enforcing the statutes enacted by the Colorado General Assembly. One significant way the Board accomplishes its mission is by adopting rules, regulations and policies to clarify the law and provide guidance to podiatrists and the public. The Board also enforces the statutory standards for licensing so that new licensees demonstrate sufficient professional competence to assure public protection. Another process used by the Board to protect the public is by acting as a fair and impartial evaluator of public complaints. We appreciate the effort of Janice Ferguson, the public member on the Board, in this

regard.

The State Podiatry Board is pleased to have a positive working relationship with the Colorado Podiatric Medical Association (CPMA). It is the function of the CPMA to promote our profession, including politically, on both the state and national level. CPMA also sponsors seminars to help keep us abreast and informed of some of the more recent developments in podiatric surgery and medicine. The CPMA is there to serve our professional community, address our concerns, and give podiatrists a voice. The value of the CPMA could not have been more evident than it was during the drafting of Board Rule 290. Thanks to the CPMA, all Colorado podiatrists were well represented during this process.

On another note, the Board will say goodbye March 17, 2005, to Dr. Ronda Ammon when her third term as a member of the Board expires. Dr. Ammon was first appointed to the Board on April 15, 1993. She served as the President of the Board from October 1999 until December 2003. We have had the privilege of working with Dr. Ammon, and her expertise and leadership is to be applauded. She will be

YOU SHOULD KNOW...

- ◆ ...That it's **time to renew podiatric licenses**. It is a violation of Colorado law to practice podiatry in Colorado without a current active license. See article on page 4.
- ◆ ...That you can now change your address or **renew your license to practice online**. See article on page 6.
- ◆ ...That the **title of "Nurse"** is now protected by Colorado law. See article on page 5.
- ◆ ...That the Board has further clarified the **Podiatry Scope of Practice**. See article on **this page**.

missed, and the Board wishes her well in all endeavors. G. Marcus Conner, DPM, has been appointed by Governor Bill Owens to replace Dr. Ammon on the Board. In addition, on behalf of the Board, I would like to wish everyone a successful year.◆

RULE 290: Scope of Practice

by Peter Hartlove, DPM, FACFAS, Board Member

Recently, the Podiatry Board made some rule changes to our Podiatry Practice Act. As some background, we have an ongoing statutory practice act that is law, defining our profession and outlining what we can and cannot do as podiatric physicians. All licensed professions have this. Within this law, it may be interpreted from time to time to help clarify the law. This is done through rules. We cannot change the law or our limitations but we can interpret the law. There have been some

issues recently that have arisen that necessitated that we look at some rule changes concerning our practice act. One of these issues is: how far up the leg can we do soft tissue procedures like wound care and treating pathologic venous and lymphatic systems?

As most of you know, podiatric medicine has been changing over the years since our practice act was expanded in 1990, giving us the statutory right to perform ankle procedures. We are very lucky to have this privilege in

our state in that the vast majority of states do not allow ankle surgery. Our statute states that we may treat conditions or defects of the "... human toe, foot, ankle or tendons that insert into the foot, including complications there of consistent with such scope of practice ...". There are two specific limitations on our practice act: we may not amputate or disarticulate the foot from the leg and we are only allowed to administer local anesthetic. Some issues

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CHANGING YOUR ADDRESS OF RECORD

Pursuant to Colorado law, the designated mailing address of any licensee or applicant is considered public information, and is therefore available to the public. The designated mailing address is used to mail all licenses, renewal notices and other official correspondence from the Board.

Please be aware that this address is also the address the Board releases to the public when an inquiry is made. However, there is also the potential that the Board may legally be required to release all addresses currently on record. If you are

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concerned about privacy, you may wish to use only a business address in place of your home mailing address and/or direct Board Staff to remove your home address information from our records.

If you are making an address change, you may do so online by visiting <https://www.doradls.state.co.us/>. You may also submit your address change in writing. This request should contain your name, license number and your new address. You may mail this change to the Division of Registrations, 1560 Broadway, Suite 1350, Denver, Colorado, 80203, or fax it to the Division at (303) 894-7693.♦

Rule 290: Scope of Practice

(Continued from page 1)

that the Board felt needed to be addressed were:

1. Podiatric physicians doing the full H&P for surgical patients at hospitals and surgery centers without a co-admitting MD or DO H&P.
2. Allowing the insertion of pins, frames, etc. above the actual level of the ankle in order to surgically treat the ankle.
3. What exact level may we amputate?
4. What exactly can we do with soft tissues above the ankle?

During the rulemaking process, the board opened the discussion to the profession at large for input. We had an excellent meeting with many members of CPMA in attendance. They made a very compelling presentation on September 11, 2004. Their recommendations included:

1. Allowing podiatric physicians to administer conscious sedation as well as local anesthetic. Some of us had this privilege at our hospitals and surgery centers.
2. Restating our allowed level of treatment to include toe, foot, ankle and tendons inserting into the foot as well as performing procedures distal to the tibial tuberosity that are necessary for care.
3. Allow H&Ps by podiatric physicians for ASA Class I and II patients.
4. Allow podiatric physicians to do surgical assisting on all lower extremity surgeries (i.e.: knees and hips) with a duly licensed MD or DO. This was recently enacted in California.

Numbers 1 and 2 are adding provisions and language to our statute that change our statute and are not allowed under rulemaking. It was argued that conscious sedation is not classified as anesthesia but the anesthesia society disagreed. We have had several long and pointed debates about what is conscious sedation and what is giving our patients medications to relax and ease the pain, such as in an emergency department situation. Arguably, it could be said that when, for example, Demerol is given in IM form, the patient has achieved conscious sedation. Be that as it may, for reality purposes, the wording "conscious sedation" cannot be used.

These issues would need to be added to a new statute, requiring our practice act to be opened in the legislature and changed. Regarding number 4, as we understand it, after California added this provision at least one malpractice company, PICA, stated that they would cover these practitioners but a very expensive rider would be added to their policy to allow assisting outside their scope of practice.

So, after many meetings, discussions and votes, Rule 290 has been enacted, effective May 1, 2005. A copy of the rule in its entirety can be found in this newsletter on page 3.

This rule attempts to clarify that podiatric physicians may not perform surgical procedures on veins, arteries or the lymphatic system in the legs. Prescribing support hose or other compression devices to affect conditions in the foot and ankle is allowed. Inserting external fixators above the ankle as part of ankle surgery is allowed. Wound care is not specifically addressed. This was discussed at great length and the prevailing opinion is that if a podiatric physician is treating ulcers and other skin pathology above the ankle, it should be done in a multidisciplinary setting, where MDs or DOs are involved. The Board recognizes that many podiatrists are well trained to treat these wounds and are in fact more skilled than MDs and DOs in doing so, but we must practice within our scope as currently defined in statute.

There has been a great deal of discussion as to whether the podiatric community through the CPMA should pursue legislation to amend the practice act. If the CPMA and/or our members at large wish to change our practice act, it is my personal opinion that a great deal of research and negotiating and support must be in place before moving in this direction. As a profession, I think we need to be extremely cautious in this regard.

Lastly, although the Podiatry Board supports the podiatric profession and would like to see all podiatrists reach their practice potential, our primary responsibility is to protect the public and the Board must work within the practice act in doing so. We always welcome your input.♦

NEW RULES

The Colorado Podiatry Board revised and adopted several rules at its March meeting. Most notable is Rule 290, further defining the scope of practice of podiatry. Other rules of interest are Rule 120, dealing with the demonstration of continued professional competence, and Rule 280 regarding misleading, deceptive or false advertising. These rules, as well as Rule 140, "License Renewal Procedures", and Rule 240, "Address Maintenance", will become effective May 1, 2005. A complete set of all rules can be found on the Board's website at www.dora.state.co.us/podiatrists.

RULE 290

Colorado Podiatry Board Rules and Regulations Further Defining the Scope of the Practice of Podiatry in Colorado

Basis:

The general authority for promulgation of these rules by the Colorado Podiatry Board is set forth in Sections 12-32-104(1)(a) and 24-4-103, C.R.S.

Purpose:

The scope of the practice of podiatry is defined statutorily by Section 12-32-101(3), C.R.S. Additionally, specific provisions governing the necessary qualifications for podiatrists who perform surgical procedures on the ankle below the level of the dermis are set forth in Section 12-32-101.5, C.R.S. The purpose of these Rules and Regulations is to clarify and carry out those provisions of Colorado statute defining the scope of the practice of podiatry in Colorado.

Statutory Provisions:

Section 12-32-101(3)(a) of the Colorado Revised Statutes sets forth the legal definition of the practice of podiatry. That section of the statute includes the following:

Suggesting, recommending, prescribing, or administering any podiatric form of treatment, operation, or healing for the intended palliation, relief, or cure of any disease, ailment, injury, condition or defect of the human toe, foot, ankle or tendons that insert into the foot, including complications thereof consistent with such scope of practice, with the intention of receiving, either directly or indirectly, any fee, gift or compensation whatsoever.

Section 12-32-101(3)(b) of the Colorado Revised Statutes includes specific limitations on the practice of podiatry as follows:

The practice of podiatry does not include the amputation of the foot or the administration of an anesthetic other than a local anesthetic.

Definitions:

As used in these Rules and Regulations, the following words and phrases have the following meanings:

CONDITION OF THE HUMAN TOE, FOOT, ANKLE AND/OR TENDONS THAT INSERT INTO THE FOOT includes any disease, disorder, symptoms, ailment, pain, injury, physical condition, deformity, or defect of the human toe, foot, ankle and/or tendons that insert into the foot.

SYSTEMIC CONDITIONS: A condition that affects one or more parts or organs of the body other than those parts found in the human toe, foot, ankle, and/or tendons that insert into the foot.

Interpretation of Section 12-32-101(3), C.R.S.

1. A podiatrist may possess, order, prescribe, dispense or administer preparations, medicines and/or drugs, including relevant braces, orthotics, prostheses and footwear, in order to treat conditions of the human toe, foot, ankle, and/or tendons that insert into the foot or in order to treat local manifestations of systemic conditions affecting the human toe, foot, ankle, and/or tendons that insert into the foot, except that a podiatrist may not administer an anesthetic other than a local anesthetic.

2. Within the limitations set forth below, a podiatrist shall perform a patient history and physical examinations that may include complete examinations that are necessary for the effective identification and treatment of conditions of the human toe, foot, ankle, and/or tendons that insert into the foot. Complete examinations are often necessary for the identification and assessment of systemic and localized conditions contributing to or causing conditions of the human toe, foot, ankle, and/or tendons that insert into the foot. Such examinations may encompass the evaluation of all organ systems or body parts. However, where generally accepted standards of podiatric practice so require, a podiatrist shall also assure that a licensed health care provider who is authorized by law to treat systemic conditions, also performs a history and physical examination for the patient.

3. A podiatrist may amputate a portion of the foot but may not disarticulate between the talus and the tibia.

4. A podiatrist may take emergency measures that are reasonable and necessary to protect and stabilize the patient's health until an appropriate provider authorized by law to treat the condition can intervene.

5. A podiatrist performing a podiatric medical or surgical procedure on the human toe, foot, ankle, and/or tendons that insert into the foot may perform more proximal measures that are incidental to the procedure and that are reasonable and necessary to perform the procedure in accordance with generally accepted standards of podiatric medicine.

RULE 120

Colorado Podiatry Board Rules And Regulations On License Reinstatement Or Reactivation And The Demonstration Of Continued Professional Competence

Statement of Basis and Purpose:

These rules are promulgated pursuant to C.R.S. 12-32-104(1)(a). Specific authority for the promulgation of these rules is set forth in C.R.S. 12-32-111 12-32-115(3), 24-34-102(8)(d)(II) and 12-70-101(2). The purpose for promulgation of these rules is to inform the public and applicants for license reinstatement or reactivation of the Board's requirements for reinstatement of a lapsed or inactive license and for the demonstration of continued professional competence for reinstatement or reactivation applicants whose licenses became lapsed or inactive more than two years.

Requirements:

1. As used in article 32, title 12, C.R.S., the terms lapsed, expired and delinquent are synonymous.

2. The Board shall not reinstate or reactivate a license that became lapsed or inactive pursuant to C.R.S. 12-32-111 or otherwise unless the licensee first accurately completes the application form approved by the Board and pays the application fees established by the Board.

3. The Board shall defer action on any application for reinstatement or reactivation if it decides, either before or after the application has been made, to investigate a complaint against the applicant as provided in C.R.S. 12-32-108.3, and if the Board decides to refer such complaint to the Office of the Attorney General for disciplinary proceedings by formal complaint, the Board shall defer final action on such reinstatement or reactivation application until a hearing has been held in accordance with C.R.S. 12-32-108.3 and the Board has issued its final order in such matter.

4. The Board shall not reinstate or reactivate the license of any applicant for reinstatement or reactivation whose license became lapsed or inactive for more than two years unless the applicant first demonstrates continued professional competence pursuant to the requirements set forth below. The applicant for reinstatement or reactivation bears the burden of demonstrating his/her continued professional competence and must furnish to the Board evidence in support of the asserted continued professional competence. The Board may request additional information from an applicant for reinstatement or reactivation.

5. The Board has established the following criteria for determining whether an applicant for reinstatement or reactivation has demonstrated her/his continued professional competence as required by C.R.S. 12-32-111(2), 12-32-115(3), 24-34-102(8)(d)(II) and 12-70-101(2). An applicant must meet all applicable criteria to establish her/his continued professional competence.

a. License lapsed or inactive two to five years. An applicant whose license became lapsed or inactive for two to five years must demonstrate her/his continued professional competence by:

1. Documenting a current license to practice podiatry in another jurisdiction;
2. Documenting an active practice of podiatry in the jurisdiction that issued the current license since the Colorado license became lapsed or inactive;
3. Submitting letters of endorsement from three licensed podiatrists

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Lapsed Licenses Can Cause Problems

License renewal is just around the corner. All podiatry licenses expire May 31, 2005. While there is a 60-day grace period till July 31, 2005, in which to renew a license, many hospital and credentialing agencies may not recognize the grace period.

Please be advised that before your renewal will be considered complete and a new license issued, the Board staff must receive correct payment of the renewal fee and a signed and accurately completed renewal questionnaire.

Other potential ramifications in allowing your license to lapse while continuing to practice are:

⇒ **Violation of Law** It is a violation of the Colorado Podiatry Practice Act to practice in the State of Colorado without an active license. The Board reviews all cases involving unlicensed practice or practicing on a lapsed license and may choose to discipline those found to be in violation.

⇒ **Insurance Coverage** Most liability carriers will not cover a license for any claim made for treatment provided during the period of time that the license was in a lapsed status.

⇒ **Hospitals** and other institutions require staff to maintain

current licensure for credentialing purposes with the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO).

⇒ **Medicare and Military Services** The federal government requires that podiatrists hold an active license if providing service to Medicare patients or serving in the Armed Forces.

⇒ **Continued Competency** A podiatrist who has allowed his or her license to be in a lapsed status for more than 2 years must prove continued competency prior to the license being restored to an active status. (Reference Board Rule 120.)

It is your responsibility as a licensee to be aware of your license expiration date. Maintaining a valid address with the Board will ensure that your renewal application and supporting documents reach you in time. New this year, and in time for renewals, is the introduction of the Division of Registrations Online Services. By accessing <https://www.doradls.state.co.us>, you can renew your license electronically using your Visa, MasterCard or American Express. See article on page 6 regarding online renewals. ♦

NEW RULES

(Continued from page 3)

or physicians who have observed the applicant's practice and who attest to the applicant's professional competence; and

4. Submitting an attestation that the podiatrist has met the continuing education requirements set forth in Board policy.

b. License lapsed or inactive more than five years. An applicant whose license became lapsed or inactive more than five years must demonstrate her/his continued professional competence by:

1. Documenting a current license to practice podiatry in another jurisdiction;

2. Documenting an active practice of podiatry in the jurisdiction that issued the current license since the Colorado license became lapsed or inactive;

3. Submitting letters of endorsement from three licensed podiatrists or physicians who have observed the applicant's practice and who attest to the applicant's professional competence;

4. Submitting an attestation that the podiatrist has met the continuing education requirements set forth in Board policy;

5. Demonstrating that the applicant has in the past passed the written PMLEXIS examination of the National Board of Podiatric Medical Examiners or any successor organization as determined by scores established by the Colorado Podiatry Board; and

6. Passage of the Board's jurisprudence examination.

c. Alternate method of establishing continued professional competence. Any podiatrist who does not demonstrate continued professional competence by compliance with the above criteria may demonstrate continued professional competency by:

1. Passage within the preceding 24 months of the written PMLEXIS examination of the National Board of Podiatric Medical Examiners or any successor organization as determined by scores established by the Board; and/or

2. Complying with any other evaluation, education, training and/or monitoring the Board may require to establish continued professional competence. Such requirements shall be at the discretion of the Board.

6. As used in this rule, "active practice of podiatry" means the applicant has engaged in the practice of podiatry at least 20 hours per week over the applicable time period with no more than a 6-month continuous absence from the practice of podiatry.

RULE 280

Colorado Podiatry Board Rules and Regulations Regarding Misleading, Deceptive or False Advertising: Clarification of Section 12-32-107(3)(q), C.R.S.

Basis: The general authority for promulgation of these rules by the State Podiatry Board is set forth in Sections 12-32-104(1)(a) and 24-4-103, C.R.S.

Purpose: To provide guidance to podiatrists regarding the Board's position with respect to misleading, deceptive or false advertising, which is unprofessional conduct pursuant to Section 12-32-107(3)(q), C.R.S. This rule applies to advertising in all types of media including, but not limited to, print, radio, television and the Internet.

Rules: Podiatrists should take special care to advertise truthfully and avoid exploitation of their position of trust. A podiatrist must avoid misleading the public because of the potential consequences of misinformation regarding health care and the importance of the interests affected by the choice of a podiatrist. Podiatrists are responsible for the contents of their own advertisements and should review such advertisements to assure adherence to ethical standards.

Therefore, podiatrists shall avoid the following types of advertising:

a.) Claims that the services performed, personnel employed, and/or materials or office equipment used are professionally superior to that which is ordinarily performed, employed, and/or used, or that convey the message that one licensee is better than another unless superiority of services, personnel, materials or equipment can be substantiated;

b.) The misleading use of a claim regarding board certification, or of an unearned or non-health degree in any advertisement that is likely to cause confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

c.) Advertising that has the effect of intimidating or exerting undue pressure;

d.) Advertising that uses unsubstantiated testimonials;

e.) Advertising that creates an unjustified expectation or guarantees satisfaction or a cure;

f.) Advertising that offers gratuitous services or discounts, the purpose of which is to deceive the public, or

g.) Advertising that is otherwise misleading, deceptive or false.

At the time any type of advertisement is placed, the podiatrist must possess and rely upon information that, when produced, would substantiate the truthfulness of any assertion, omission or claim set forth in the advertisement. When using a subjective testimonial whose truthfulness cannot be substantiated, the advertisement should also include disclaimers or warnings as to the credentials of the person making the testimonial. ♦

Actions Taken by the Podiatry Board

The cases described below represent Board actions concluded by the Colorado State Podiatry Board from January 1, 2004 to December 31, 2004. Board actions listed below may not be the only action. Contact the Podiatry Board office for actions entered outside of these dates. Documentation of Board actions may be obtained by visiting this website <http://www.dora.state.co.us/doraimages> or by sending a written request to Janie Spurlock at the Podiatry Board address, or by e-mail at janie.spurlock@dora.state.co.us.

Board Action Definitions

Letter of Admonition (LOA): A public reprimand issued to the podiatrist in the form of an actual letter or as part of a Stipulation. The letter or Stipulation is a public record and may be obtained from the Board Office.

Stipulation and Final Agency Order (Order): An order of the Board and an agreement between the Board and the practitioner prior to a formal hearing. A stipulation resolves the case. In a stipulation, both parties agree to facts, sanctions and the terms and conditions for continued practice, if applicable.

Final Board Order: Final order issued by the Board after a formal hearing before an Administrative Law Judge (ALJ) where evidence and testimony were presented. The ALJ prepares a written report of the findings, which the Board reviews and then makes the final ruling regarding the appropriate sanction.

Prima Facia: Literally means "at first view" or "on its face". As used in this context, it means that the Board believes it has evidence to prove a violation of the Podiatry Practice Act has occurred. *However*, this evidence may have been rebutted or outweighed had the case gone to hearing.

Summary Suspension pursuant to 24-4-104(4), CRS: An immediate, temporary withdrawal of the practitioner's license to practice podiatry pending prompt commencement of formal disciplinary proceedings. This type of suspension can only be ordered when the Board finds the public health, safety or welfare requires emergency action or that the practitioner has willfully violated the law.

Summary Suspension pursuant to 12-32-108.3(11)(a), CRS: A suspension of a practitioner's license for failure to comply with a Board order for a medical examination.

Podiatry Board Action

Richard Charles, D.P.M., Denver, CO

License #345

DOB: 05/31/53

Action Date: 6/4/2004

Outcome: On June 4, 2004, the Podiatry Board terminated Dr. Charles' 2002 Stipulation and Final Agency Order and restored his podiatry license to active status with no practice monitoring requirements. *This is not a disciplinary action.*

Medical Board Action of Interest

Gary Snyder, D.P.M., Lakewood, CO

Unlicensed

DOB: 08/20/45

Action Date: 12/13/04

Outcome: A Stipulated Order for Permanent Injunction and Final Judgment was approved in Jefferson County District Court wherein Dr. Snyder is permanently and perpetually enjoined from performing any act that constitutes the practice of medicine as defined by section 12-36-106 of the Medical Practice Act. The Order is open for public inspection and is reported as required by law. ♦

The Title of "Nurse" Now Defined and Protected by Colorado Statute

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The Colorado Nurses Association was recently heavily involved in a revision of the Colorado Nurse Practice Act. The revised statute, C.R.S.12-38-123 now reads:

(1) It is unlawful for any person:

(a) To practice as a practical or professional nurse unless licensed therefore;

(b) (I) To represent himself or herself to an individual or to the general public by use of any word or abbreviation to indicate or induce others to believe that he or she is a licensed practical or professional nurse unless the person is actually licensed as a practical nurse or professional nurse, respectively;

(II) To use the title "nurse", "registered nurse", "R.N.", "practical nurse", "trained practical nurse", "licensed vocational nurse", "licensed practical nurse", or "L.P.N." unless the person is licensed by the board.

(III) Notwithstanding any provision of this paragraph (b) to the contrary, a person who provides nonmedical support services may use the title "Christian Science nurse" when offering or providing services to a member of his or her own religious organization.

(c) To practice as a practical or professional nurse during a period when his license has been suspended or revoked;

(d) To sell or fraudulently obtain or furnish a license to practice as a nurse or to aid or abet therein.

(2) Any person who violates the provisions of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who subsequently violates any provision of this section within three years after the date of the first conviction commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Practically speaking, the revisions now mean that office personnel, such as a medical assistant or nursing assistant, may no longer call themselves the doctor's "nurse." Certified nurse aides in nursing homes may not tell a patient or family that they are their "nurse" for the day. Only LPNs and RNs with an active license may use the title of nurse. Failure to comply with the above statute may result in a class three misdemeanor. ♦

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