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Testimony Submitted to the Board of Registration in Podiatry in Response to the Board's Consideration of Changes to 249 CMR 2.00 -7.00 , the Rules and Regulations Governing the Registration and Conduct of Podiatrists, Pursuant to Executive Order 562, Issued by Governor Baker on March 31, 2015.

June 9, 2015

Thank you for the opportunity to comment on regulations governing the practice of podiatry in Massachusetts.

The MOA believes the current regulations exceed statutory authority and should be revised to remove references relative to treatment of the ankle and Achilles tendon.

MGL Chapter 112, Section 13 is as follows:

> Podiatry as used in this chapter shall mean the diagnosis and the treatment of the structures of the human **foot** by medical, mechanical, surgical, manipulative and electrical means without the use of other than local anesthetics, and excepting treatment of systemic conditions, and excluding amputation of the foot or toes. This and the ten following sections shall not apply to surgeons of the United States army, navy or of the United States Public Health Service, nor to physicians registered in the commonwealth. The term physician and surgeon when used in sections twelve B, twelve G, twenty-three N and eighty B shall include a podiatrist acting within the limitation imposed by this section.

Although the statute does not allow for such, in the following places in the regulations, references are made to the ankle, and Achilles tendon:

- 249 CMR 2.02 defines the practice of podiatry as meaning the following meaning the following conduct: the maintenance of human podiatric health by the prevention, alleviation or cure of disorders, injuries or disease of the human foot and ankle by medical, mechanical, surgical, manipulative and electrical means, and the prescription and administration of drugs for the relief of disease or adverse physical podiatric conditions. The scope of practice of podiatry includes resections of the foot; as well as surgical procedures involving the ankle joint. In the course of treating the human foot or ankle, a registered podiatrist may perform an Achilles tendon lengthening and he or she may also perform tendon transfers that require incisions into the lower leg. The scope of practice of podiatry includes the diagnosis of systemic diseases.

- 249 CMR 4.01, relative to the role of the podiatrist also refers to the foot and ankle, as does 249 CMR 4.08, relative to the use of general anesthesia.

The MOA would also suggest that the Podiatry Board adopt regulations and guidelines in line with that of the Board of Registration in Medicine, especially as it concerns issues of transparency and oversight.

Specifically, MGL Chapter 112, Section 5, requires the Board of Registration in Podiatry to develop and post online physician profiles as follows:

> "The board shall collect the following information reported to it to create individual profiles on licensees and former licensees in a format created by the board that shall be available for dissemination to the public: (a) a description of any criminal convictions for felonies and serious misdemeanors as determined by the board; provided, however, that for the purposes of this clause, a person shall be considered to be convicted of a crime if the person pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction; (b) a description of any charges for felonies and serious misdemeanors as determined by the board to which a physician pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction; (c) a description of any final board disciplinary actions; (d) a description of any final disciplinary actions by licensing boards in other states; (e) a description of revocation or involuntary restriction of privileges by a hospital, clinic or nursing home under chapter 111, or of any employer who employs physicians licensed by the board for the purpose of engaging in the practice of medicine in the commonwealth, for reasons related to competence or character that have been taken by the governing body or any other official of the hospital, clinic or nursing home or employer who employs physicians licensed by the board for the purpose of engaging in the practice of medicine in the commonwealth after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital, clinic or nursing home or employer who employs physicians licensed by the board for the purpose of engaging in the practice of medicine in the commonwealth taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, clinic or nursing home or of any employer who employs physicians licensed by the board for the purpose of engaging in the practice of medicine or employer who employs physicians licensed by the board for the purpose of engaging in the practice of medicine in the commonwealth; (f) all medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party and all settlements of medical malpractice claims in which a payment is made to a complaining party; provided, however, that dispositions of paid claims shall be reported in a minimum of 3 graduated categories indicating the level of significance of the award or settlement; provided further, that information concerning paid medical malpractice claims shall be put in context by comparing an individual licensee's medical malpractice judgment awards and settlements to the experience of other physicians within the same specialty; provided further, that information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician; provided further, that a payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred; provided further, that nothing herein shall be construed to limit or prevent the board from providing further explanatory information regarding the significance of categories in which settlements are reported; provided further, that pending malpractice claims shall not be disclosed by the board to the public; provided further, that nothing herein shall be construed to prevent the board from investigating and disciplining a licensee on the basis of medical malpractice claims that are pending; provided, however, that payments made as part of a disclosure, apology and early offer program, shall not be construed to be reportable to or by the board against the physician, absent a determination of substandard care rendered on the part of said physician; (g) names of medical schools and dates of graduation; (h) graduate medical education; (i) specialty board certification; (j) number of years in practice; (k) names of the hospitals where the licensee has privileges; (l) appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten years; (m) information regarding publications in peer-

reviewed medical literature within the most recent ten years; (n) information regarding professional or community service activities and awards; (o) the location of the licensee's primary practice setting; (p) the identification of any translating services that may be available at the licensee's primary practice location; (q) an indication of whether the licensee participates in the Medicaid program."

Chapter 112, Section 2 requires physicians to demonstrate meaningful use of electronic health records as follows:

> "The board shall require, as a standard of eligibility for licensure, that applicants demonstrate proficiency in the use of computerized physician order entry, e-prescribing, electronic health records and other forms of health information technology, as determined by the board. As used in this section, proficiency, at a minimum shall mean that applicants demonstrate the skills to comply with the "meaningful use" requirements, as set forth in 45 C.F.R. Part 170."

The MOA encourages the Podiatry Board to adopt similar language to that detailed above on physician profiles and meaningful use as a condition of licensure for podiatrists.

In conclusion, the MOA believes, the Podiatry Board should be as robust, transparent, and comprehensive in its oversight as the Board of Registration in Medicine.

Thank you for your consideration of our comments to the current regulations governing the practice of podiatry. We would be happy to meet with the Board at your convenience to further discuss our concerns and our mutual goal of ensuring high quality patient care and safety.