

Self-Evaluation Report



**Texas State Board of Podiatric
Medical Examiners**

August 2003

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**Due to a page numbering error, page "#19" was inadvertently left out, however, all of the information is present.

Texas State Board of Podiatric Medical Examiners Self-Evaluation Report

I. Key Functions, Powers, and Duties

Please provide the following information about the overall operations of the agency. More detailed information about individual programs will be requested in a later section.

A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.

The Texas State Board of Podiatric Medical Examiners (TSBPME) was created in 1923 by the 38th Legislature. They gave us the title of the "Texas State Board of Chiropody Examiners". In 1967, our name was changed to the "Texas State Board of Podiatry Examiners" and in 1996 the name was again changed to its current form, the "Texas State Board of Podiatric Medical Examiners". We are the state agency entrusted by the legislature and the people of Texas with the responsibility of licensing podiatric physicians (podiatrists) and regulating podiatric medicine (podiatry) in this state.

This is accomplished by means of a fair, aggressive and comprehensive testing, licensing and enforcement program that guarantees that only qualified professionals are granted licensure and can practice podiatric medicine in Texas.

The three key functions of this agency, testing, licensing and enforcement are all statutory functions.

The mission of the TSBPME is to assure quality podiatric medical care for the citizens of the State of Texas. The Board fulfills its mission through the regulation of the practice of podiatric medicine. This mission, derived from the Podiatric Medical Practice Act (Chapter 202 of the Texas Occupations Code) supersedes the interest of any individual, the podiatric medical profession, or any special interest group.

We had been an agency of five (5) FTE's in FY'03, but after budget cuts, we are now down to three (3) FTE's with an annual appropriation of \$204,000. After paying salaries, and longevity, we are left with \$45,373 a year as our annual operating budget to run our agency.

B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?

Generally speaking, our statute correctly reflects our mission, functions, powers and duties. Notwithstanding this, there is a need to provide us with additional statutory authority, similar to that given to other medical licensing/regulatory agencies to enhance our ability to appropriately carry out our duties and responsibilities.

1. We need statutory language to make our board's investigator a Texas Peace Officer, a status that the investigators of the Pharmacy, Medical and Dental Boards all currently possess. Without this status, our agency is not able to receive/obtain critical information from federal, state and local law enforcement and regulatory entities that we co-investigate many of our

complaint investigations with. This drastically slows down many of our most critical complaint investigation cases and makes it substantially more difficult to obtain evidence, receive updates from the co-investigating entity on the status of their part of the investigation, dramatically impairing our investigative process.

2. We do not have statutory authority to perform an emergency suspension of a podiatry license, when a podiatric physician is found to be in violation of our Rules/Statute to the extent that the public's safety and welfare is in jeopardy. Currently, we must go through the complete investigative process (including SOAH), allowing a "bad" practitioner to continue practicing for up to a year or more until their license can be suspended or revoked. We must have the statutory authority, similar to that of the Board of Medical Examiners, to allow us to immediately and temporarily stop a bad doctor from practicing, when grossly substandard medicine is being practiced and the public's health and safety is in jeopardy.
3. We need statutory authority to conduct compliance inspections, to ensure that the doctor's office, surgical suite, etc. meets the minimum standards for cleanliness and safety, as set by local, state and federal guidelines.
4. We need statutory language to strengthen our subpoena authority, similar to language contained in the Medical Practice Act that allows them to suspend a licensee for non-compliance with an Administrative Subpoena.

C. Please explain why these functions are needed. Are any of these functions required by federal law?

The functions of our agency are necessary to protect the public by ensuring the safe practice of podiatric medicine in Texas. Podiatric Physicians, along with allopathic and osteopathic physicians (M.D.'s and D.O's) are the only medical practitioners granted hospital privileges. Without our board testing podiatric physicians for competency, licensing them to ensure that they annually meet the standards we set for them (including meeting continuing education requirements) and investigating and taking disciplinary action on complaints brought against them, there would be no daily oversight of the practice of podiatric medicine. The harm to the public's safety would be enormous, with the very real potential for patients to experience substandard medical care, including substandard surgery, serious post-operative infection, needless partial or full foot amputation, Medicare/Medicaid and insurance fraud, drug diversion and abuse, and patient death, to mention just a few issues.

D. In general, how do other states carry out similar functions?

Each of the other forty-nine states has a podiatric medical board that is tasked with testing, licensing and investigating its podiatric physicians. They all function in a similar manner to our process. We are one of the more successful state agencies regulating podiatric medicine, one that other states look to emulate. Our testing and investigative processes are being looked at by other states and by other Texas agencies as models of "how to do it" and are considered to be "state of the art".

E. Describe any major agency functions that are outsourced.

None of our major agency functions are currently outsourced.

F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency’s key functions.

There are no changes in Federal Law or outstanding court cases that have the potential to impact our agency’s key functions.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Public Information (Open Records) Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1999 - 2003, or earlier significant Attorney General opinions, that affect the agency’s operations.

Texas State Board of Podiatric Medical Examiners Exhibit 1: Statutes/Attorney General Opinions	
Statutes	
Citation/Title	Authority/Impact on Agency (e.g., “provides authority to license and regulate nursing home administrators”)
§202.1(4) Texas Occupations Code (TOC)	Defines “Podiatry” for Texas and sets the scope of practice for podiatric physicians in Texas.
§202.002 TOC	Subjects Board to abolishment by Sunset process in 2005 (Sunset Act).
§202.151 TOC	Provides general rulemaking authority to regulate podiatric physicians, regulate podiatric medicine and enforce the laws relating to podiatric medicine.
§202.153 TOC	Provides the authority to establish and collect fees reasonable and necessary to cover the costs of performing the duties and responsibilities of administering Chapter 202.
§202.154 TOC	Allows the Board to appoint committees to consider issues and make recommendations to the full Board.
§202.155 TOC	Authorizes the Board to enter into contracts with other state agencies to carry out the Board’s activities and functions.
§202.158-204 TOC	Establishes guidelines for our complaint and investigative processes.
§202.251-304 TOC	Sets guidelines for our licensing function.
§202.305 TOC	Gives the Board authority to require mandatory continued medical education hours for license renewal

§202.501(a) TOC	Provides the authority to suspend or revoke a license or place a licensee on probation.
§202.507 TOC	Gives us the authority to issue administrative subpoenas and to request compliance through District Court.
§§202.509(a) TOC	Gives the Board’s investigative files confidentiality.
§§202.552 TOC	Gives the Board the authority to impose specific penalties for violations of our Statute and Rules.
202.601 TOC	Authorizes the Board to institute actions to enjoin violations of our Practice Act and Rules.
§202.605 TOC	Makes it a criminal offense to practice podiatric medicine without a license.
§202.606	Sets criminal penalties for amputation of the “human foot” by podiatric physicians.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
AG’s Opinion No. DM423	This opinion affirms our Board’s authority to regulate hyperbaric oxygen therapy (HBO) and to determine if this medical modality is within the scope of practice for podiatric physicians in Texas. This opinion allows podiatric physicians (who have met the Board’s requirements) to perform HBO dives for their patients, within a hospital setting.
AG’s Opinion No. JC-0274	In this opinion, the AG opined that, “The Texas State Board of Podiatric Medical Examiners is not authorized to conduct warrantless on-site compliance inspections of its licensees or their premises.” Therefore, we cannot perform compliance inspections of our licensee’s offices, surgical suites, etc. to ensure that they are in compliance with all federal, state and local health and safety rules and laws. This severely limits our ability to ensure the safe practice of podiatric medicine.
AG’s Opinion No. JC-0441	The AG opined that §375.1 of our Board’s Rules extended the practice of podiatric medicine beyond what §202.001(our Statute) authorizes. This opinion would have rolled back the practice of podiatric medicine twenty years or more by not allowing podiatric physicians to practice on the ankle. This opinion resulted in a lawsuit in Travis County District Court,

	in which the court ruled that §375.1 was a lawfully made rule. The Court also ruled that an AG’s opinion cannot trump a lawfully made rule promulgated by a state agency in the lawful exercise of it’s duties and responsibilities. In effect, this ruling allows podiatric physicians to continue to include the ankle in their scope of practice
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H. Please fill in the following chart:

Texas State Board of Podiatric Medical Examiners Exhibit 2: Agency Contacts				
	Name	Address	Telephone & Fax Numbers	E-mail Address
Agency Head	Allen M. Hymans Executive Director	P.O. Box 12216 Austin, TX 78711	512.305.7000 Fax 512.305.7003	hymans@foot.state.tx.us
Agency’s Sunset Liaison	Same as above and: Janie Alonzo Staff Services Officer	Same as above	512.305.7002 Fax 512.305.7003	janie.alonzo@foot.state.tx.us

II. History and Major Events

Provide a time line discussion of the agency’s history, briefly describing the key events in the development of the agency, including:

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency’s operations; and
- key organizational events, and areas of change and impact on the agency’s organization (e.g., a major reorganization of the agency’s divisions or program areas).

See **History and Major Events Examples** or [click here to link directly to the examples](#).

- 1895 Official recognition of podiatric medicine as a profession in the USA began with the regulation of its practice by New York State.
- 1917 Earliest recorded meeting of those practicing podiatry (then known as chiropody) in Texas. Formation of the “Texas Chiropodist Society”.
- 1923 Per HB487 of the 38th legislature, podiatric medicine was added to the Texas Medical Act and the first licensure of podiatric physicians took place by the newly created regulatory board under the State Board of Medical Examiners
- 1939 The legislature establishes an independent Board that is named the “Texas State Board of Chiropody Examiners”, to regulate podiatric medicine in Texas.
- 1950 Two additional years of undergraduate college credit were added to the admission requirements for podiatric medical colleges.
- 1967 The Board’s name was changed to the” Texas State Board of Podiatry Examiners”, acknowledging the change of its medical practice from chiropody to podiatry.
- 1978 The undergraduate education hours requirements for examination eligibility in Texas were increased from sixty hours, to a minimum of ninety hours of Board approved study.
- 1981 The Board’s office was moved from Waco to Austin, Texas.
- 1991 The Board’s Executive Director was made a full-time position.
- 1995 By order of the 74th Legislature, the Board’s Office was moved to the William P. Hobby Building and co-located with the twelve other health professional licensing and regulatory agencies that comprise the Health Professions Council.
- 1996 The Board implemented major changes in its examination of candidates for licensure, including creating a criterion-referenced examination and established new requirements for candidates to have; 1) successfully graduated from a four-year undergraduate college, 2) graduated from an approved four-year college of podiatric medicine, successfully completed Parts I, II and III of the National Board and successfully completed a minimum one-year approved podiatric medical residency program.

- 1999 The legislature increases the Board's FTE count from three to four with the addition of an Admin Tech III, to enhance licensing, the intake of funds and continuing medical education (CME) processes.
- 2001 Board defines the term "foot" for the practice of podiatric medicine in Texas
- AG's Opinion JC-0441 is issued which would severely limit the current practice of podiatric medicine.
- Board acquires one additional FTE, an Admin Tech II (now five full-time FTE's) to assist with complaint investigations, reception/phones, intake of funds and clerical duties.
- 2002 Texas Podiatric Medical Association initiates a "friendly" lawsuit against the Board due to concerns that because of AG's Opinion JC-0441, the Board would Travis County District Court rules that AG's Opinion JC-0441 does not have the authority to trump a rule (our definition of "foot") that has been properly promulgated. Court also rules that our definition of "foot" had gone through the appropriate rulemaking process and was a valid rule.
- The Board approves a change in its licensing examination process, moving the exam from its old oral/practical format to its current form, a written jurisprudence examination. This format change was a proactive measure, calculated to eliminate the potential for lawsuits from candidates failing the exam, similar to those being experienced in other states.
- The Texas Orthopaedic Association initiates legal proceedings to attempt to have our Board's definition of "foot" declared unlawful. Per the Texas AG's Office, our agency is forced to hire outside council to represent us in this matter and pay the cost for our legal representation. These legal fees caused us to be short \$3,220 at the end of this fiscal year, causing us to be negative this amount for FY '03.
- 2003 Due to mandated 7% reduction of funds, it is necessary to permanently RIF one FTE, eliminating our Admin. Tech. III position, and adding the licensing and CME functions of that position onto our Staff Services Officer's existing duties and responsibilities.
- Due to a hiring freeze and budgetary issues, a critical FTE position has not been refilled, causing additional workload and stress on the remaining three FTE's. Effectively, our agency's FTE's are now reduced by 40%
- Legislature reduces our budget an additional 12.5% in each year of the next biennium.

III. Policymaking Structure

A. Please complete the following chart:

Texas State Board of Podiatric Medical Examiners Exhibit 3: Policymaking Body					
Member Name	Term/ Appointment Dates/ Appointed by ____ (e.g., Governor, Lt. Governor, Speaker)	Qualifica tion (e.g., public member, industry representa tive)	Address	Telephone & Fax Numbers	E-mail Address
Donald W. Falknor, D.P.M.	Governor Term expires 7/10/2003	Licensee Member	7737 S/W Freeway Ste 500, Houston TX, 77074	713-981- 4448 Fax 713- 981-4490	
Brad Glass, D.P.M.	Governor Expires 7/10/2005	Licensee Member	1300 W Wall Midland TX 79701	915-685- 3650 Fax 915- 685-3788	
Jimmie D. Lummus, D.P.M.	Governor Expires 7/10/2003	Licensee Member	1023 Caddo San Angelo TX 76901	915-658- 4020 Fax 915- 658-1884	
Sandra Cuellar, D.P.M.	Governor Expires 7/10/2005	Licensee Member	5925 Forrest La #116 Dallas TX 75230	214-303- 2488 Fax 214- 303-2488	
Bruce Scudday, D.P.M.	Governor Expires 7/10/2007	Licensee Member	1810 Murchison Ste 206 El Paso TX 79902	915-533- 5151 Fax 915- 533-5187	
Matt Lynch, D.P.M.	Governor Expires 7/10/2007	Licensee Member	Santa Fe Center 600 South 25 th St Temple TX 76504	254-771- 8470 Fax 254- 771-8349	
Ms. Barbara Young	Governor Expires 7/10/2003	Consumer Member	4545 Bissonnet Ste 131 Bellaire TX 77401	713-666- 6388 Fax 713- 666-6454	
Ms. Carol Baker	Governor Expires 7/10/2007	Consumer Member	POB 690827 Houston TX	281-366- 0858 Fax 281- 376-3046	
Ms. Kathryn Boyd	Governor Expires 7/10/2005 RESIGNED DO TO FAMILY HEALTH ISSUE 5/2003 – Vacancy not yet				

	filled by Governor				
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B. How is the chair of the policymaking body appointed?

At a scheduled and posted meeting of our board, as an agenda item, the board’s president (board chair) is elected from within the board’s membership, by the board, for a two-year term. At this meeting, board members nominate candidates to fill the position. Once presentations are made by the candidates, the full board then votes and the candidate with the most votes is elected the new board president and chair for the next two years.

C. Describe the primary role and responsibilities of the policymaking body.

Our board has the responsibility of promulgating rules and setting policies that will keep the practice of podiatric medicine in Texas in line with the practice of podiatric medicine around the country and world. The board’s rules are under constant review to ensure that they ensure the safe practice of podiatry and that they protect the public from unsafe podiatric physicians. New rules are made and existing rules are changed or removed as necessary to ensure quality podiatric medicine for the citizens of Texas. The public’s safety and welfare is the board’s number one responsibility. The agency’s executive director reports to the board on the day-to-day running of the agency and the board advises the E.D. as necessary, to ensure that the agency is running effectively, efficiently and maintaining its responsibilities to the medical community, public and private hospitals, federal, state and local entities, its licensees and the public in a satisfactory manner.

D. List any special circumstances or unique features about the policymaking body or its responsibilities.

N/A

E. In general, how often does the policymaking body meet? How many times did it meet in FY 2002? in FY 2003?

The Board is required by Statute to meet a minimum of twice a year but generally meets three times annually. In 2002, the Board met three times and so far in FY 2003, the board has already met twice. Meetings are held as necessary, to properly conduct the business at hand effectively and efficiently.

F. What type of training do the agency’s policymaking body members receive?

All new Board Members are issued a “Board Member Training Manual” that was specifically designed for them by the Texas Attorney General’s Office. This manual is approved by the AG’s Office as an alternative to their having to addend the Board Member Training Program that is offered by their office. Our new Board Members are required to read the entire manual and must provide us with a signed and dated letter, affirming their having fully read the manual. They must also affirm their full and complete understanding of all the

material contained in the manual before they are allowed to become a voting member of the board. Additionally, Board Members may attend the AG's Board Member Training Program at their own expense. Additional training is provided by the AG's Office at Board Meetings, as necessary.

G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.

We do not presently have specific written policies that delineate the roles of our board in running our agency. It has been the long-standing practice of the Board to keep itself primarily focused on its role as a rulemaking entity and on its statutory responsibilities of regulating the practice of podiatric medicine and enforcing the laws regarding its practice. The Board maintains contact with, and oversight of the running of our agency through reports to the board made during the normal course of scheduled Board Meetings via reports to the Board by the agency's E.D., Investigator and Staff Services Officer on day-to-day issues, fiscal matters, licensing and examinations for licensure, and the status of complaint investigations. The agency's E.D. actively fosters free and active contact between agency staff and the Board Members. There is excellent direct communication between staff and Board Members on every conceivable issue. This easy, unmonitored direct interaction between the Board Members and agency staff allows the Board to keep their fingers "on the pulse" of what is happening with the agency, and it allows agency staff to have their questions on issues before them answered in an effective and timely manner.

H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart. See Exhibit 4 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How are members appointed?	Purpose/Duties	Legal Basis for Committee
Podiatric Medical Reviewer Liaison	One Board Member appointed by the Board President and affirmed by the Board	Oversees the Medical Reviewer Program for investigation of complaints against our licensees and reports proposed Agreed Orders to the full Board for their consideration.	§202.154 TOC
Examination Liaison	One Board Member appointed by the Board President and affirmed by the Board	Oversees the jurisprudence examination process, chairs the “Exam Development Committee”. Reports to Board all exam activity and all candidates successful in passing the exam.	§202.154 TOC
Rules Committee	Three Board Members appointed by the Board President and affirmed by the Board	Responsible for reviewing current rules for revision or removal and making suggestions to Board for new rules.	§202.154 TOA
Continuing Medical Education Liaison	Appointed by Board President and affirmed by the Board	Responsible for all CME questions on eligibility of a specific presentation or program for CME credit and for how many credits. Brings major CME issues to Rules Committee or full Board for further action.	§202.154 TOA

I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?

All of the Board’s meetings are held under the rules of the Texas Open Meetings Act. Board Meetings are posted in the Texas Register to give the public the opportunity to know what the agenda is for the Board Meeting’s and to be present at the meeting, if they so desire. The Board follows the proper rulemaking process, posting its proposed rules in the Texas Register, taking and considering all public input and

conducting public hearings when indicated. Our “trade association” (Texas Podiatric Medical Association) is also notified of all meetings and often has a representative or their attorney present at our Board meetings, to provide the Board with TPMA’s position or suggestion(s) on a given agenda item. The Board also receives public suggestions or comments on various issues that the public may have sent directly to the agency. Agency staff members forward these items, as indicated, either to the Board Committee responsible for the matter at hand, or to the Board President or Vice-President for review. These items may then become agenda items for discussion and review by the full Board. If the suggestion, etc. has merit, the Board can take action on it, voting to set policy or creating, amending or removing rules as necessary to address the issue. Further, the agency sends out a questionnaire to each licensee annually, soliciting their input on specific issues relating to customer satisfaction, whether the board is doing a good job in various arenas, etc. We also have a website that the public can use to obtain contact information for the agency’s staff and Board Members, to facilitate their providing input on any issues or matters that they wish. All legitimate suggestions or comments are brought to the attention of the Board for their consideration and possible action.

IV. Funding

A. Describe the agency’s process for determining budgetary needs and priorities.

Our Executive Director and Staff Services Officer meet on an almost daily basis to oversight how well our agency’s appropriated funds (operating budget) are meeting our needs and to set priorities for how the funds are being spent. This information is shared with the Board at each meeting and with the Board President on a more frequent basis. The agency’s employees and the Board are constantly assessing the needs of the agency and projecting what our future needs are. Based on all of this information and input from our Board, and from agency staff, our Trade Organization, the public, etc., and based on all new responsibilities and duties as assigned to us by the legislature, the Executive Director and the Staff Services Officer formulate a proposal for the next legislative session (approved by the Board) that requests any additional funding, staff, etc. that is deemed crucial to the continued operation of the agency for the next biennium.

PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.

B. Show the agency’s sources of revenue. Please include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency. See Exhibit 5 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 5: Sources of Revenue — Fiscal Year 2002 (Actual)	
Source	Amount
General Revenue	\$376,632
Appropriated Receipts	\$ 3,700
TOTAL	\$380,332

C. If you receive funds from multiple federal programs, show the types of federal funding sources. See Exhibit 6 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 6: Federal Funds — Fiscal Year 2002 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				
TOTAL				

D. If applicable, please provide detailed information on fees collected by the agency. See Exhibit 7 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 7: Fee Revenue and Statutory Fee Levels — Fiscal Year 2002				
Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
Podiatrist Renewal Fee	\$420 yr/N/A	764	\$320,880	General Revenue
Podiatrist Renewal Penalty – 1 st 90 days	\$125/= 1/2 Appl Fee	39	\$4,875	General Revenue
Podiatrist Renewal Penalty – after 90 days	\$250/= Appl Fee	20	\$5,000	General Revenue
Podiatrist Renewal Fee Previous Year	\$335 yr/N/A	8	\$2,680	General Revenue
Podiatrist Prorated Activation Fee	\$84/N/A	8	\$672	General Revenue
Podiatrist Prorated Activation Fee	\$248/N/A	15	\$3,720	General Revenue
Provisional License	\$125/N/A	1	\$125	General Revenue
Application Fees	\$250/N/A	49	\$12,250	General Revenue
PMLexis Fees	\$50/N/A	36	\$1,800	General Revenue
Temporary License Fees	\$125/N/A	46	\$5,750	General Revenue
Temporary License Extension	\$50/N/A.	4	\$480	General Revenue
Radiologic Technician Registration	\$25/N/A	251	\$6,275	General Revenue
Radiologic Technician Penalty	\$5/N/A	38	\$190	General Revenue

Duplicate Certificates	\$10/N/A	1	\$10	General Revenue
Duplicate License	\$50/N/A	0	\$0	General Revenue
TexasOnline Fees	\$5/\$5	795	\$3,975	General Revenue
Administrative Fines	\$0-10,000/10,000	4	\$7,750	General Revenue
License Verifications	\$2/N/A	495	\$990	Appropriated Receipts*
Sale of Lists	\$15-100/N/A	28	\$2,245	Appropriated Receipts*
Certification Letters	\$10-15/N/A	19	\$280	Appropriated Receipts*
Copies & Postage	\$.10 per pg plus postage/N/A		\$75	Appropriated Receipts*
Sale of Laws/Rules	\$10/N/A	11	\$110	Appropriated Receipts*

*The first \$1,000 of Appropriated Receipts goes into General Revenue towards our Appropriated amounts.

E. Show the agency’s expenditures by strategy. See Exhibit 8 Example or [click here to link directly to the example.](#)

Texas State Board of Podiatric Medical Examiners Exhibit 8: Expenditures by Strategy — Fiscal Year 2002 (Actual)	
Goal/Strategy	Amount
Goal: Protect Citizens	\$221,355
GRAND TOTAL:	\$221,355

F. Show the agency’s expenditures and FTEs by program. See Exhibit 9 Example or [click here to link directly to the example.](#)

Texas State Board of Podiatric Medical Examiners Exhibit 9: Expenditures and FTEs by Program — Fiscal Year 2002 (Actual)					
Program	Budgeted FTEs, FY 2002	Actual FTEs as of August 31, 2002	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
*					
TOTAL					

* Our agency is so small that we don’t really break our expenditures down into programs.

G. Show the agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2004-2005. See Exhibit 10 Example or [click here to link directly to the example](#). Add columns and rows as necessary.

Texas State Board of Podiatric Medical Examiners Exhibit 10: Objects of Expense by Program or Function -- Fiscal Year 2004			
Object-of-Expense Informational Listing	Strategy, Program, Division, or Function ___ Exam, Educate, Investigate	Strategy, Program, Division, or Function ___ (insert strategy, division or program name)	Strategy, Program, Division, or Function ___ (insert strategy, division or program name)
Salaries & Wages	\$153,064	N/A	N/A
Other Personnel	\$3,120	N/A	N/A
Operating Costs	\$45,373	N/A	N/A
Capital Expenditures	\$8,000	N/A	N/A
Total, FY 2004 Object-of-Expense Informational Listing	\$209,557	N/A	N/A

Objects of Expense by Program or Function -- Fiscal Year 2005			
Object-of-Expense Informational Listing	Strategy, Program, Division, or Function ___ Exam, Educate, Investigate	Strategy, Program, Division, or Function ___ (insert strategy, division or program name)	Strategy, Program, Division, or Function ___ (insert strategy, division or program name)
Salaries & Wages	\$153,064	N/A	N/A
Other Personnel	\$3,120	N/A	N/A
Operating Costs	\$43,108	N/A	N/A
Capital Expenditures	\$ 5,500	N/A	N/A
Total, FY 2005 Object-of-Expense Informational Listing	\$204,792	N/A	N/A

H. Please fill in the following chart. See Exhibit 11 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 11: Purchases from HUBs				
FISCAL YEAR 2000				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	\$4,424	0	0%	20.0%
Other Services	\$6,196	0	0%	33.0%
Commodities	\$5,868	0	0%	12.6%
TOTAL	\$16,488	0	0%	
FISCAL YEAR 2001				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	\$6,448	0	0%	20.0%
Other Services	\$5,805	\$7	0.1%	33.0%
Commodities	\$16,613	\$2,846	17.1%	12.6%
TOTAL	\$28,866	\$2,853	9.9%	
FISCAL YEAR 2002				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	\$5,047	0	0%	20.0%
Other Services	\$5,699	0	0%	33.0%
Commodities	\$14,005	\$5,768	41.1%	12.6%
TOTAL	\$24,751	\$5,768	23.3%	

I. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?

Our agency adheres to the state's HUB policy. We have worked hard to utilize HUB's for purchases under our control (example: office supplies), whenever possible and when not contra-indicated by dollar constraints.

J. For agency with contracts valued at \$100,000 or more:

	Response / Agency Contact
Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available under contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)	N/A

K. For agencies with biennial appropriations exceeding \$10 million:

	Response / Agency Contact
Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)	N/A
Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)	N/A
Has you agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128)	N/A

V. Organization

A. Please fill in the chart below. If applicable, list field or regional offices. See Exhibit 12 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 12: FTEs by Location — Fiscal Year 2002			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2002	Number of Actual FTEs as of August 31, 2002
Headquarters	333 Guadalupe, Tower II, Ste 320 Austin, TX 78701	5	5
TOTAL		5	5

B. What was the agency's FTE cap for fiscal years 2002 - 2005?

Our agency's FTE cap for fiscal years 2002 & 2003 was 5, and for fiscal years 2004 & 2005 it is 4.

C. How many temporary or contract employees did the agency have as of August 31, 2002?

Our agency had no temporary or contract employees as of August 31, 2002.

D. Please fill in the chart below. See Exhibit 13 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 13: Equal Employment Opportunity Statistics							
FISCAL YEAR 2000							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1	0%	5%	0%	8%	0%	26%
Professional	2	25%	7%	0%	7%	50%	44%
Technical	N/A	N/A	13%	N/A	14%	N/A	41%
Protective Services	N/A	N/A	13%	N/A	18%	N/A	15%
Para-Professionals	N/A	N/A	25%	N/A	30%	N/A	55%
Administrative Support	1	0%	16%	0%	17%	25%	84%
Skilled Craft	N/A	N/A	11%	N/A	20%	N/A	8%
Service/Maintenance	N/A	N/A	19%	N/A	32%	N/A	27%

FISCAL YEAR 2001								
Job Category	Total Positions	Minority Workforce Percentages						
		Black		Hispanic		Female		Other
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency
Officials/Administration	1	0%	5%	0%	8%	0%	26%	0%
Professional	2	0%	7%	0%	7%	25%	44%	25%
Technical	0	0%	13%	0%	14%	0%	41%	0%
Protective Services	0	0%	13%	0%	18%	0%	15%	0%
Para-Professionals	0	0%	25%	0%	30%	0%	55%	0%
Administrative Support	1	0%	16%	0%	17%	25%	84%	0%
Skilled Craft	0	0%	11%	0%	20%	0%	8%	0%
Service/Maintenance	0	0%	19%	0%	32%	0%	27%	0%
FISCAL YEAR 2002								
Job Category	Total Positions	Minority Workforce Percentages						
		Black		Hispanic		Female		Other
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency
Officials/Administration	1	0%	5%	0%	8%	0%	26%	0%
Professional	2	0%	7%	0%	7%	20%	44%	20%
Technical	0	0%	13%	0%	14%	0%	41%	0%
Protective Services	0	0%	13%	0%	18%	0%	15%	0%
Para-Professionals	0	0%	25%	0%	30%	0%	55%	0%
Administrative Support	2	20%	16%	0%	17%	40%	84%	0%
Skilled Craft	0	0%	11%	0%	20%	0%	8%	0%
Service/Maintenance	0	0%	19%	0%	32%	0%	27%	0%

E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?

Our agency has specific guidelines contained in the “Employment Practices” section of our Personnel Manual that covers equal employment Opportunities. We have always met our guidelines for equal employment opportunity.

VI. Guide to Agency Programs

Please complete this section for each agency program (or each agency function, activity, or service if more appropriate). Copy and paste the question boxes as many times as needed to discuss each program, activity, or function. Please contact Sunset staff with any questions about applying this section to your agency.

A. Please complete the following chart.

Texas State Board of Podiatric Medical Examiners Exhibit 14: Program or Function Information — Fiscal Year 2002 Chart A	
Name of Program or Function	Licensing
Location/Division	333 Guadalupe, T-II, Ste 320, Austin TX 78701
Contact Name	Janie Alonzo
Number of Budgeted FTEs, FY 2002	1.5
Number of Actual FTEs as of August 31, 2002	1.5

B. What are the key services of this function or program? Describe the major activities involved in providing all services.

We annually license podiatric physicians in Texas. We ensure that they are qualified to practice podiatry in Texas by means of a comprehensive testing program, by verifying that the doctors have met the substantial requirements for licensure as set by the Board, and by ensuring that the doctors are complying with their required CME's, including an annual random audit program. We print and issue our own licenses to ensure strict controls over the certificates and to be as cost effective as possible.

C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.

This is one of the main functions of our agency and is a task assigned to us by the legislature via §202 of the Texas Occupations Code.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?

Our licensing function has not changed, other than in the complexity of the additional requirements for licensure that have been initiated since the agency's founding and in the increase of the number of licensees

processed. This is a function that will always be needed in order to continue to ensure that only safe and qualified podiatric physicians can practice in Texas.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Licensing affects all podiatric physicians practicing or wishing to practice in Texas. The qualifications for licensing to practice podiatric medicine in Texas are found in §371 of the Texas Administrative Code.

F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

For new D.P.M. licenses:

- A folder shall be made for each new licensee that shall contain the license application and attached documentation for meeting the requirements of the level of licensure being requested.
- Agency staff will review the application and attachments to ensure completion of all requirements as set by the Board.
- If the license application is missing required documentation, a letter will be sent to the applicant informing them of the items needed to complete the application.
- Any license fee(s) attached to the application will be verified for proper amount, and required format (check, money order, etc.). Verified fees will then immediately be entered into the agency's system for processing funds, and will be safeguarded per agency policy and procedure.
- The completed license application will be processed in a timely manner.
- A new license number will be assigned the applicant and a license will be printed, using the agency's license form and in-house printer. This license will be mailed directly to the new licensee.
- The appropriate information on the new licensee will be inputted into the agency's licensing database, including all information required by our agency, the National Practitioner Data Bank and the Federal Health Integrity Practitioner Data Bank. This information shall be public information, with the exception of the licensee's Social Security Number.
- The licensee folder will be kept in alphabetical order in a filing system with all other current licensees

For D.P.M. license renewals:

- License renewal forms received by the agency will be immediately date stamped and the envelope it was received in will be attached to the renewal form (to safeguard and document the post office or other shipping entity's documented date of sending the renewal form).
- Receiving staff will verify that all renewal requirements set by the Board have been fulfilled, including continuing medical education units if applicable.

- If the renewal does not contain all of requirements, the renewal form and attachments will be returned to the licensee with written documentation of the item(s) that are lacking. Copies of the renewal form and attachments will be made and maintained by our agency before sending the originals back to the licensee.
- If the renewal is received with a postmark after November 1, and has been expired for less than 90 days, the renewal shall have a fee of the required renewal fee plus one-half of the examination fee. If the renewal is received more than 90 days but less than one year after November 1, the renewal fee shall be the normal renewal fee plus a fee equal to the full examination fee. A license renewal for a license that is more than one year old shall not be renewed.
- Renewal fees will be promptly entered into the agency's financial system and safeguarded as per agency policy.
- A license renewal that has met all of the renewal requirements set by the Board will be processed in a timely manner.
- A new license certificate will be printed in-house with the licensee's name, license number and new expiration date and forwarded to the agency's executive director for signature.
- The agency's executive director shall, in a timely manner sign the renewal certificate and return it to agency staff.
- Agency staff will complete an envelope, using the licensee's address of choice and then place the completed renewal certificate in the mail, for delivery to the licensee.
- The agency's podiatric physician database will be updated to include the new license expiration date and any new or changed information supplied by the licensee regarding practice locations, phone numbers, etc.

For new Podiatric Medical Radiologic Technologist Registration:

Any person (other than a registered nurse or to persons certified by the Department of Health under the Medical Radiologic Technologist Certification Act) performing radiologic procedures under the supervision of a podiatric physician must be registered with the Board. It is the policy of the Board that issuance of a registration shall be based on the requirements set forth in the Board's rules.

- Applications for registration will be handled in a timely manner.
- A folder shall be made for each new registrant that shall contain the registration form and all supporting documentation demonstrating compliance with the requirements for issuance of a registration form.
- Agency staff will review the registration application to ensure completion of all requirements as follows:
 - The registrant is 18 years or older.
 - The registrant has received satisfactory training and instructions in the performance of the authorized radiologic procedures.
 - Inclusion of the annual registration fee as set by the Board
- Registration may be denied for the following reasons:
 - Any violation of the Board's rules.
 - Any violation of the Medical Radiologic Technologist Certification Act or the rules promulgated by the Texas Department of Health in §143.1 et. Seq.
 - Any violation of the rules of the Texas Department of Health for the control

of radiation.

- Non-payment of registration fees.
- An application being returned due to missing documentation or fees, shall be accompanied by a letter, informing the registrant of the items needed to complete their registration
- Once agency staff verifies that the registration application is complete, they shall assign the registrant a new registration number and print out a new registration certificate, using an agency in-house printer.
- The registration certificate shall expire on December 31st of the year in which the registration is issued.
- This form will be brought to the agency's executive director for signature.
- The executive director will sign the form and return it to agency staff in a timely manner.
- Agency staff will mail the form to the registrant at the business address of the podiatric physician they are employed by.
- Agency staff will enter the registration information into the agency's Podiatric Medical Radiologic Technologist database and will file the registrant's folder alphabetically in the agency's filing system.

Podiatric Medical Radiologic Technologist Registration renewal:

- Registration renewal forms received by the agency will be immediately date stamped and the envelope it was received in will be attached to the form.
- Agency staff will verify that all renewal requirements as set by the Board have been fulfilled.
- If the renewal is lacking any required items, the renewal information will be copied and kept in a separate file. The original form and attachments will be mailed back to the registrant along with a letter explaining what items are lacking.
- Renewals received with postmarks after January 1 will have a late fee of five dollars (\$5.00) added on to the normal renewal fee.
- Complete registration renewals will be processed in a timely manner.
- The renewal fees will be promptly entered into the agency's financial system and be safeguarded as per agency policy.
- The registrant's information and new expiration date will be imputed into the agency's Podiatric Medical Radiologic Technologist database.
- A new registration certificate will be generated using the current agency form.
- The form will be printed on an in-house printer and brought to the agency's executive director for signature.
- The executive director shall sign the registration form and return it to agency staff in a timely manner.
- Agency staff will mail the registration renewal directly to the office of the D.P.M. they are working for.

G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.

N/A

H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Licensing is exclusively funded by the agency's appropriation.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Our agency desperately needs additional funding to maintain key staff and hire additional staff so that we may remain within our timeframes for licensing. We currently have one FTE doing what 2.5 were doing within the last year, due to budget cuts required by the legislature.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

There are no other programs that provide this licensing function for podiatric physicians in Texas.

K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

L. Please provide any additional information needed to gain a preliminary understanding of the program or function.

N/A

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Licensing is necessary to ensure that only well qualified and properly trained podiatric physicians can practice in Texas. Our license is valid for a one-year period. This allows us to monitor each licensee annually for compliance with the Board’s Rules and Statute regarding licensing, including Continuing Medical Education Units. If a licensee is found to be non-compliant, they are not allowed to renew their license.

Texas State Board of Podiatric Medical Examiners Exhibit 14: Program or Function Information — Fiscal Year 2002 Chart II	
Name of Program or Function	Examination of Licensure Candidates
Location/Division	333 Guadalupe, T-II, Ste 320, Austin TX 78701
Contact Name	Janie Alonzo
Number of Budgeted FTEs, FY 2002	1
Number of Actual FTEs as of August 31, 2002	1

B. What are the key services of this function or program? Describe the major activities involved in providing all services.

Candidates for licensure as podiatric physicians in Texas are tested to ensure that they have the proper knowledge of medicine and of the Statute and Rules that govern their practice, to safely practice on the citizens of Texas. This is accomplished by the active verification of the candidates having passed all three parts of the National Board, having completed a minimum one-year residency program, passing our jurisprudence exam, and meeting all of the requirements contained in our Board Statute and Rules for licensure.

C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.

This is one of the main functions of our agency and is a task assigned to us by the legislature via §202 of the Texas Occupations Code.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?

Our examination function has changed, in the complexity of the additional requirements that have been initiated since the agency's founding, and in its format change from an oral/practical examination to a written jurisprudence exam. Additionally, over the years, there has been an increase in the number of podiatric physicians requesting to sit for the exam and license here. This is a function that will always be needed, in order to continue to ensure that only safe and qualified podiatric physicians can practice in Texas.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Examinations function affects all podiatric physicians wishing to license to practice podiatry in Texas. The qualifications for licensing to practice podiatric medicine in Texas are found in §371 of the Texas Administrative Code.

F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

TIME/PLACE/SCOPE of EXAMINATION:

- The Boards' examination will be administered four times a year, at a time to be selected by the Board.
- The exam administered by the Board is a written jurisprudence examination, based on the Board's Rules and Statute. Unless otherwise stated, it shall be in multiple-choice format.
- Candidates shall not be permitted to bring medical books, notes, medical journals, or other help into the examination room, or communicate by word or sign with another examinee while an examination is in progress without the permission of the presiding examiner and within the hearing of a designated representative of the Board. The candidate shall not leave the examination room except when permitted by the presiding examiners and accompanied by a member or employee of the Board.
- Candidates shall sign a Confidentiality Form, affirming that they will not share or divulge any information regarding the examination questions or content with any other person.
- A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while an examination is in progress.

EXAM DEVELOPMENT COMMITTEE:

- The Exam Development Committee shall consist of podiatric physicians licensed in Texas for a minimum of five years, and the Board's Testing Consultant.
- An Exam Development Committee appointee must be licensed in "good standing" by the

- Board for a five year period preceding their appointment to the committee.
- Committee appointees must attest to confidentiality by signing an affidavit that will be kept on file in the agency's offices.
- The committee's chair shall be the Board Member appointed by the full Board as the Examination Liaison.
- The committee shall meet as necessary to construct examinations based on the committee's test specifications, that reflects the knowledge of the Statute and Rules governing the practice of podiatric medicine in Texas.

TESTING CONSULTANT:

The testing consultant shall be a recognized expert in the field of testing, contracted with by the agency on a yearly basis. The testing consultant shall review, analyze and determine the legal defensibility of past and current practices as they relate to the examination process used by the Board. The testing consultant shall, at minimum:

- Review current analysis of practice (job analysis) and provide summary comments and individual recommendations.
- Review the examination blueprint provided by the examination development committee, to determine the linkage of blueprint to analysis of practice.
- Review current and past practices as they relate to the development of the examination questions and type of testing practices.
- Analyze security procedures as they relate to actual examination administration.
- Review examination administration site selection and monitoring as they relate to providing testing accommodations in compliance with the Americans with Disabilities Act.
- Examine score reporting practices.
- Examine cumulative and statistical data relating to candidate and item performance.
- Provide assistance in the development of a report relating to validation practices for the Sunset Advisory Commission.

EXAMINATION FORMAT:

The Board's jurisprudence examination is generally given in written format. Each candidate will be allowed a total of two hours to take the exam. Typically, the exam is comprised of sixty-five multiple-choice questions contained in an examination booklet. The proctors shall issue one booklet to each candidate on the day of the exam, after the examination instructions have been explained and all candidate questions have been answered. On verbal instruction from the proctors, candidates will open their exam booklet and will begin the exam. Candidates having questions or needing to use the restroom shall quietly raise their hand to signify their need. A proctor shall address the candidate's question promptly. If the candidate needs to use the restroom, one proctor of the same gender as the candidate shall remove the candidate's exam from their possession and shall pass the exam to the senior proctor for safekeeping before escorting the candidate to the restroom. The proctor shall enter the restroom with the candidate to ensure that no cheating is occurring, but shall make every effort to remain discreet and to allow the candidate common privacy. When finished, the proctor will escort the candidate back to the examination room and will return the candidate's exam to the candidate. When the candidate has completed their examination, the completed answer sheet and examination booklet shall be turned into the proctor assigned to this task. This designated proctor shall review

the materials to ensure that all testing booklet sheets and the answer sheet are present before dismissing the candidate.

DUTIES OF AGENCY STAFF:

Agency staff will assist in administering the examination as follows:

- Applicants who have met the Board’s qualifications to sit for the exam and have paid the appropriate fees as set by the Board shall be notified by agency staff of their so qualifying, as per the Board’s Policy & Procedure (P&P) on “Processing Applications”.
- Agency staff will assist the various exam committees, as necessary, and participate in exam committee meetings as requested, or when necessary to make presentations and disseminate information to the committee members.
- Agency staff will assign all candidates random numbers starting with the number “one”, through the total number of candidates qualifying for that specific exam. These numbers will be used to identify the candidates throughout the exam, in lieu of using the candidate’s names. Agency staff will prepare plastic tags containing the appropriate numbers that will be issued to the candidates on the day of the exam.
- Applicants will be required to wear their candidate number badge for the duration of the examination process.

ON THE DAY OF THE EXAM:

- On the date of the exam, arriving applicants will be directed by pre-mailed written notice and by signs posted by agency staff at the testing location, to a central meeting room, where a pre-examination candidate orientation presentation will be made. This orientation shall explain the examination process and basic rules for appropriate candidate conduct during and after the exam. The presenters may include the Board Member liaison to the Examination Development Committee, the agency’s executive director, agency staff and the exam testing consultant.
- One staff person shall be assigned to the large candidate holding area, to be available to answer candidate questions, maintain security over state and candidate property and to ensure that candidates are maintaining confidentiality.
- One staff person shall man a candidate check-in table outside the candidate holding area. This staff person shall stop every candidate before they enter the holding area and check the candidates’ eligibility to sit for the exam. Candidates not having completed all requirements as set by the Board shall be denied entry to the holding area and access to the exam. This staff person shall also check the candidates photo I.D. (preferably a state driver’s license) to ensure that it is the candidate and not some individual posing as the candidate that is being admitted to the examination.
- Agency staff administering the jurisprudence examination shall ensure that confidentiality is maintained by candidates and shall immediately report any potential confidentiality issues to the senior examiner and agency’s executive director. Agency staff will await further directions from senior staff.
- Agency staff on escort duty will be responsible for escorting candidates needing to use the restroom from and back to the testing site. Staff will visually check the restroom and stall to be used to ensure that no written materials are hidden there. Staff will remain in the restroom until the candidate no longer has need of it and will then escort the candidate back

to their test site.

WHEN THE EXAM HAS BEEN COMPLETED:

- Agency staff shall be responsible for receiving all candidate score sheets from candidates completing the exam. Each candidates answer sheet will be graded, using the answer template for that specific examination. Final scores will be entered onto an examination scoring form.
- When all candidate scores have been entered onto this form, they will be turned over to the agency's testing consultant. The testing consultant will review the scores, to ensure that the examination questions were not flawed and will issue a report validating the examination. The testing consultant will then return all examination materials to agency staff.
- Agency staff will, within 30 days, send written notice to each candidate, notifying them of their having passed or failed the exam. The candidate's score shall be included in the letter. For candidates passing the exam, they shall also be provided with written instructions detailing the procedure for activating their new license to practice podiatric medicine.

EXAMINATION REVIEW:

- Agency staff receiving an examination candidate's request to review their exam responses will ensure that the request has been made within the time frame designated by the agency.
- After determining that the request is timely, staff shall make arrangements for the review to take place.
- The review shall be conducted at a date/time/location set by the agency, which shall have sole and exclusive right to set the parameters for the review.
- The review will be conducted by the agency's testing consultant whenever possible. In lieu of same, the Board Member assigned to the exam development committee, or other agency staff may conduct the review.
- During the review, the candidate will be provided their examination-scoring sheet.
- The agency representative conducting the review shall ensure that only the materials relating to the question being reviewed are accessible to the candidate. Staff will allow the candidate to make any handwritten notes that they wish. The candidate **will not be allowed to leave the review site with anything, including their handwritten notes.**
- If the review results in the determination being made that the question(s) under review were scored improperly, the review representative shall recommend to the examination's assigned Board Member liaison that the candidates' exam score be raised or lowered as necessary, to reflect the proper score.
- The assigned Board Member liaison and review representative will make the final decision, if any, to correct the score and will advise agency staff of the decision made.
- Agency staff will change the candidate's score(s) to reflect the decision made. Staff will notify the candidate in writing of the change(s) made. If the change allows a candidate who had failed the exam to pass the exam, the candidate will also be informed in writing of what they must do to activate their new license.

Examination results will be kept on file in the agency's office.

**Texas State Board of Podiatric Medical Examiners
Exhibit 14: Program or Function Information — Fiscal Year 2002**

Chart III

Name of Program or Function	Complaint Investigations
Location/Division	333 Guadalupe, T-II, Ste 320, Austin TX 78701
Contact Name	Hemant Makan
Number of Budgeted FTEs, FY 2002	1.5
Number of Actual FTEs as of August 31, 2002	1.5

B. What are the key services of this function or program? Describe the major activities involved in providing all services.

Our agency thoroughly investigates all complaints received about podiatric physicians in Texas. We receive these complaints via telephone (agency's phones or a special 1-800 toll free complaint hotline), or in writing. Complaints are investigated and those that are found to have merit, proceed to formal consent hearings and if necessary, SOAH hearings. The Board may enter into an Agreed Order with the doctor, that restricts or suspends the doctor's license to practice. The Board may order additional training, psychiatric or medical evaluations as necessary and ultimately, can revoke the doctor's license.

C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.

The investigation of complaints is one of the main functions of our agency and is a task assigned to us by the legislature via §202 of the Texas Occupations Code.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?

Our complaint Investigation process has evolved from having a part-time investigator to a full-time investigator and recently, our entire investigative process was revamped to remove any participation by Board Members in its complaint review process. This was accomplished by the training of a large group of podiatric medical reviewers (PMR's). These PMR's are made up of licensed podiatric physicians in Texas who meet the Board's strict guidelines for years of quality medical practice and experience in their profession and medical knowledge. These PMR's received intensive training by our agency staff and board members and were then certified by the Board to review medical aspects and issues contained in the complaints that we receive. This state of the art process is being looked at by other medical licensing/regulatory entities that want to enhance their own investigative/review process.

The Complaint Investigation function affects all podiatric physicians licensed by our agency who may have a complaint made against them. This function will always be required, to ensure that podiatric physicians are practicing within the guidelines set for them by our Statute and Rules, and they are practicing good and safe medicine. Podiatric Physicians are one of only three groups of medical practitioners in Texas that are granted hospital privileges, along with osteopathic and allopathic physicians (M.D.'s and D.O.'s). In performing medical procedures and surgeries on the people of Texas, podiatric physicians have a great potential, if inappropriately trained and regulated, to cause serious harm and even death to their patients. It is a great responsibility that the Board and our agency takes very seriously.

F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The investigative/hearings/SOAH process is so complex and voluminous that it is not possible to properly detail it in the framework of this report. As such, this is a highly condensed and abbreviated synopsis of the process:

1. A complaint is received by the agency from a person, hospital, insurance company, other federal, state, local agency or entity, etc., alleging that one of our licensees has done something wrong.
2. The complaint is reviewed to ensure that it is within our jurisdiction. If it is, it is assigned a case number and a letter is generated to the complainant, explaining our investigative process, our general timeframes, etc. If it is non-jurisdictional, the complaint is referred to the appropriate entity having jurisdiction over it and a letter is generated to the complainant explaining where their complaint is being forwarded to and why it is being done. The letter contains contact information for the entity that will be receiving the complaint.
3. The complaint is then data entered into our agency's complaint database.
4. The complaint is assessed to see if it needs to be expedited and given priority, based on the seriousness of the allegations and the potential for public harm.
5. The case is now investigated, to determine if the doctor(s) accused have done anything wrong (violated our statute/rules, violation of standard of care issues, negligence, Medicare/Medicaid billing fraud, etc.).
6. If the issues involved in the complaint are medical in nature, the case is forwarded to the next available Podiatric Medical Reviewer (PMR) for their evaluation and recommendation.
7. If the investigation and PMR review results in a finding of no wrongdoing, the complainant and the doctor are sent letters explaining our finding and the case is closed (after review by the Board).
8. If our investigation results in a finding of wrongdoing, a penalty is determined and the accused doctor is presented with a proposed Agreed Board Order that documents the wrongdoing and assigns various penalties and/or remedial activities.
9. If the accused doctor agrees with the Order, they sign it and it is presented to the full Board at the next Board Meeting. The Board reviews the Order and then votes to affirm it. If affirmed, the Order is signed by the Board President and the agency's Executive Director. The penalties immediately go into effect. If the Board votes not to affirm the Order, they can set new proposed penalties or chose to make a finding of no wrongdoing.
10. If the Order is not affirmed, the newly amended Order (containing the newly added or deleted penalties) is sent back to the accused doctor for their review and acceptance.
11. If there is no affirmation of the Order (a finding of no wrongdoing), the case is closed as in #7 above.
12. If the accused doctor reviews the Proposed Order and decides not to accept it, a Consent Hearing is scheduled under §2000.054 of the TAC. At this hearing the accused is given an opportunity to bring forward all evidence that would show the Board that the accused doctor did nothing wrong. If informal mediation and negotiations at this meeting are successful, the Proposed Board Order is either signed or refused. If the accused accepts the Proposed Order, it is signed and proceeds on as

- in # 9 above. If no further negotiation is possible, the complaint allegation is forwarded to SOAH and scheduled to be heard before a SOAH Administrative Law Judge.
13. The SOAH Hearing is held and at a later date, the SOAH Judge issues their recommendation (ruling).
 14. The ruling is then presented to and considered by the full Board and they vote to affirm the SOAH ruling.
 15. The affirmed SOAH is then incorporated into a Disciplinary Order, containing the punishment(s) recommended by SOAH and affirmed by the Board. The Order is signed and served on the guilty doctor.
 16. The discipline contained in the Order goes into effect. The accused doctor has the right to appeal the decision and Order by filing an appeal in District Court.
 17. The District Court can either affirm the Board's Order or dismiss it.
 18. If necessary, the punished doctor is monitored to ensure that the Order is being complied with.
 19. A copy of the Order or Agreed Order is placed in the appropriate agency file and information regarding the doctor's Disciplinary is placed on our agency's website under the "Disciplinary Actions" list. This allows the public immediate information that the doctor has had disciplinary action taken against him/her.
 20. The disciplinary action is reported to the National Practitioner Databank.
 21. The case is marked closed as per #7 above.
 22. It should be noted that complaint cases and Board Orders are kept on file forever. All disciplinary actions are available to the public on written request.

G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.

N/A

H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The complaint investigation function is exclusively funded by the agency's appropriation.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Our funding for investigations is not adequate. We do not have sufficient monetary resources to adequately fund our investigators, Board Member or professional witnesses travel expenses, to reimburse our PMR's appropriately for their reviews, or to conduct SOAH hearings. Our Internal Audit for last fiscal year focused on our investigative process, and it assigned this process high praise. The sole audit finding was that it was imperative that additional funds be appropriated to us by the legislature, to allow us to conduct the SOAH hearings necessary to resolve our investigations (we currently have approximately seven cases with high potential to proceed to SOAH with no funding to cover our costs). We made a "Building Blocks" request for

additional funds for this purpose this past session, but we were not provided with any additional funds for this purpose.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

There are no other programs that provide this complaint investigation function for podiatric physicians in Texas.

K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

L. Please provide any additional information needed to gain a preliminary understanding of the program or function.

N/A

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Our investigative process is needed to appropriately address complaints received on our licensees. We must determine if the doctor accused has acted outside of their scope of practice, if they have done anything medically or otherwise wrong and then, we must take any disciplinary action necessary to resolve the issue(s) at hand. In order to do this, we must walk down a clearly delineated path designed and properly funded by the legislature and monitored by the courts of the land, to protect the rights of the accused, the complainant and the citizens of Texas, while ensuring the safe practice of podiatric medicine in Texas.

Unfortunately, we do not currently have the authority that many other Boards do, to make an emergency suspension of a podiatric physician's right to practice, in those rare cases where allowing the doctor to continue to practice could cause substantial patient harm. We are forced to allow these few "bad" doctors to continue to practice, while we proceed through the lengthy and cumbersome investigative process that is designed to protect the rights of the doctor, sometimes at the expense of the patient. This issue needs to be resolved by the addition of statutory language that would give our Board the authority to make emergency suspensions of podiatric physician's licenses, when indicated.

As per Texas AG’s Opinion No. JC-0274, we are not authorized to conduct “compliance” inspections of our licensees or their practice locations without a warrant. Notwithstanding, this Opinion, once an Agreed Order goes into effect, we can monitor the doctor for compliance. We regularly require doctors to do any number of things to ensure compliance with their Agreed Orders, such as:

- Allow the scheduled or unscheduled inspection of their practice and patient records.
- Require the doctor to obtain additional training and have the training hospital, etc. send us verification of the training (received by us directly from the entity).
- Require the doctor to generate extensive written reports, documenting their compliance with the provisions of their Order.
- Require the doctor to make in-person reports to the full Board, at regularly scheduled meetings, on their progress in complying with the provisions of their Order.
- Require the doctor to send us reports, results of medical screening and testing from drug programs, psychiatrists, etc. to verify compliance with mandatory monitoring as required by their Agreed Order.

If any non-compliance of the Agreed Order is noted, the Board immediately revokes the Order and re-opens the original investigation. Additional penalties including administrative fine, additional suspension and ultimately, revocation of the doctor’s license to practice may be initiated.

Please see our response to Section “F” above for additional information on procedures for handling complaints against our licensees.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency’s practices.

Texas State Board of Podiatric Medical Examiners Complaint Investigations Exhibit 15: Complaints <u>Against</u> Regulated Entities or Persons – Fiscal Years 2001 and 2002		
	FY 2001	FY 2002
Number of complaints received	133	103
Number of complaints resolved	99	108
Number of complaints dropped/found to be without merit	85	53
Number of sanctions	0	0
Number of complaints pending from prior years	61	72
Average time period for resolution of a complaint	218.22 days	201.10 days
Number of entities inspected or audited by the agency	1	7
Total number of entities or persons regulated by the agency	800 Podiatrists 274 Rad-techs	822 Podiatrists 249 Rad-techs

VII. Agency Performance Evaluation

A. What are the agency's most significant accomplishments?

Our agency's most significant accomplishment has been and continues to be the effective and efficient regulation of the practice of podiatric medicine in Texas, allowing the citizens of this state to obtain the highest level of podiatric medical care from well trained and qualified podiatric physicians. Although we are currently experiencing a 40% reduction in our workforce due to the mandated reductions in our appropriation and a hiring freeze, our dedicated and hard working staff are working overtime to continue to provide the same level of regulatory oversight and customer service for the people of Texas.

Our Board has worked hard to keep Texas in the forefront of state-of-the-art podiatric medical practice, allowing the best medical care possible within the most prudent guidelines for patient safety. By use of their rulemaking authority, the Board has promulgated fair and effective rules to ensure that podiatric physicians practicing in Texas are held to the highest standards of accountability, while being given the opportunity to use the latest medical modalities, such as Hyperbaric Oxygen Therapy (HBO), to treat their patients. As an example, the use of HBO has saved diabetic patients in Texas many thousands of partial and full amputations of their feet, that otherwise would have been necessary. This in turn has saved many millions of dollars in needless medical expenses, while extending the quality of life for thousands of patient's, and that of their families, by putting off or avoiding entirely unnecessary invasive medical procedures.

B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

In an effort to provide legendary customer service, our agency is in a continuous process of evaluating our performance. Our agency's executive director and staff services officer meet bi-weekly to evaluate agency performance and to determine how to most effectively maintain a high level of performance within the agency's resources. The Board is kept updated on this information via phone conferences and at Board Meetings. We continuously solicit comments and input from our licensees, inviting them to make suggestions for improvement, or comment on the service they receive from us. On an annual basis, we send each licensee a formal questionnaire, asking them to rate our performance in specific areas. This information is collated and shared with our Board and various state entities. Agency performance issues are presented to the full Board at each Board Meeting for their evaluation, suggestions comments and possible action. Our agency also uses an outside accounting firm to perform an annual performance audit. This is done to identify and resolve potential performance weaknesses in our agency. Once done, the audit's findings are provided to the full Board and to various entities of the State of Texas. If issues are raised by the audit, they are aggressively addressed by the agency. The Board and agency staff work together to forecast the agency's needs, and to ensure that our projected needs are brought to the attention of the legislature. It is then up to the legislature to give us the resources requested/necessary to keep our agency running efficiently and effectively.

C. What are the agency's biggest opportunities for improvement?

The area that has the greatest potential for improvement is in our complaint investigation process. Our process is currently operating at the highest efficiency possible, within our current funding. Even at this level of performance, there are still major issues that need to be addressed. In order to resolve these issues and achieve the goal of operating the best complaint investigation process possible, we desperately need several specific things:

1. We need to be provided with the statutory authority to allow us to conduct on-site compliance inspections of our licensee's practice locations and surgical areas, to ensure that our podiatric physicians are in compliance with our Statute and Rules, and to ensure that they are complying with all federal, state and local rules and laws governing their practice.
2. We need statutory authority to give our investigator peace officer status. This status is currently conferred on the investigators of the Medical Board, Dental Board, Board of Pharmacy, TDH and TABC investigators.

Not having this status has effectively prevented us from participating on an equal basis with outside law enforcement and regulatory entities that are actively involved in co-investigating many of our major complaint investigations. It also severely complicates our obtaining important investigative information and severely impacts our ability to conduct complaint investigations in an effective and timely manner.

3. We must obtain additional funding that will allow us to be able to fund the SOAH hearings necessary to complete investigations that are at the point of needing to be heard by SOAH.

D. How does the agency ensure its functions do not duplicate those of other entities?

Our agency is the only state entity tasked with regulating podiatric medicine and licensing podiatric physicians in Texas. Therefore, the service we provide is not duplicated in Texas. Notwithstanding this issue, we are a member of the Health Professions Council. The purpose of this Council is to allow its member agencies to share resources to create greater efficiency and to identify and prevent the duplication of services being provided to the public.

E. Are there any other entities that could perform any of the agency's functions?

There are not any other entities in Texas, at this time, which could perform the varied functions of this agency.

F. What process does the agency use to determine customer satisfaction and how does the agency use this information?

We encourage all customers of our agency to comment on the service we provide and to make suggestions for any improvements to our services. Contact information is contained on our agency's letterhead and is readily available on our agency's website. We also conduct an annual quality survey that is sent to each of our licensees. This survey allows them to rate us on specific areas and to provide us with suggestions and comments on any additional subject that they may deem appropriate. Suggestions having merit are shared with the Board and agency staff. When necessary and appropriate, these suggestions are implemented, to improve our level of service.

G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.

In the last ten years, our agency has only had three complaints made against it. Private individuals initiated each of these complaints. In each case, the complainant was initially referred to the agency's Executive Director. If the complainant was not satisfied with the result of their conversation with the E.D., the E.D. then referred them to file a formal complaint with the proper agency or entity having jurisdiction, including but not limited to the complainant's state representative or senator, or the Governor's Office. The E.D. provided the complainants with all information necessary for them to contact the appropriate entity and agency staff cooperated fully with any investigation that might arise from the complaint. It should be noted that none of these complaints were found to have any merit by the entities that investigated them.

Per new legislation passed this session, the Health Professions Council member agencies (including our agency) will be establishing an Office of Patient Protection, which, among other things, will house an ombudsman to assist persons or entities having complaints against our agency.

H. Please fill in the following chart. The chart headings may be changed if needed to better reflect

the agency's practices.

Texas State Board of Podiatric Medical Examiners Exhibit 16: Complaints <u>Against the Agency</u> – Fiscal Years 2001 and 2002		
	FY 2001	FY 2002
Number of complaints received	0	0
Number of complaints resolved	0	0
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	0	0

I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?

All requests for information under the Public Information Act (PIA) must be in writing. The request is immediately date stamped and forwarded to the appropriate staff person having jurisdiction over the record(s) requested. If there is a question as to whether or not we can legally provide the requested information, a request for an opinion on the specific request is made to the Office of the Texas Attorney General. A letter is immediately sent to the requestor, informing them of the referral of their request to the AG's Office for a decision on our ability to release the requested information. If the AG's decision opines that we may not release the information, a copy of that decision along with a cover letter from us is sent to the requestor, informing them that the information cannot be released. If the decision is to release the information, then the requested information is immediately sent to the requestor. Our response to requests for information under the PIA are made in a timely manner, within the spirit of, and time constraints contained in the Act.

J. Please fill in the following chart with updated information and be sure to include the most recent e-mail address if possible.

Texas State Board of Podiatric Medical Examiners Exhibit 17: Contacts			
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)			
Group or Association Name/ Contact Person	Address	Telephone & Fax Numbers	E-mail Address
Texas Podiatric Medical Association	918 Congress Ave, Suite 200 Austin, Texas, 78701	Phone 512.494.1123 Fax 512.494.1129	dcanada@txpma.org
INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with the agency)			
Group or Association Name/ Contact Person	Address	Telephone & Fax Numbers	E-mail Address
American Podiatric Medical Association	9312 Old Georgetown Rd Bethesda, MD, 20804	Phone 301.571.9200 Fax 301.530.2752	
Federation of Podiatric Medical Boards	PO Box 880187 Boca Raton Fl 33488	561.477.3060	
LIAISONS AT OTHER STATE AGENCIES (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
Agency Name/Relationship/ Contact Person	Address	Telephone & Fax Numbers	E-mail Address
Texas AG's Office-Melissa Juarez	PO Box 12548 Austin TX 78711	512.475.3209	Melissa.Juarez@oag.state.tx.us
Governor's Office of Budget & Planning-Janice Ehlert	PO Box 12428 Austin TX 78711	512.463.1778	
Legislative Budget Board- Thomas Galvan	1501 Congress Ave, 5 th Fl Austin TX 78711	Phone 512.463.1169	Thomas.galvan@lbb.state.tx.us

Health Professions Council	333 Guadalupe T-2 Ste.220 Austin TX 78701	Phone 512.305.8550 Fax 512.305.8553	Charles.Horton@ hpc.state.tx.us
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VIII. 78th Legislative Session Chart

Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). See Exhibit 18 Example or [click here to link directly to the example](#).

Texas State Board of Podiatric Medical Examiners Exhibit 18: 78th Legislative Session Chart		
Legislation Enacted - 78th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent
N/A		
Legislation Not Passed - 78th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent/Reason the Bill did not Pass
N/A		

IX. Policy Issues

A. Brief Description of Issue I

Should our agency be able to conduct warrantless compliance inspections of podiatric physician's practices and surgical sites?

B. Discussion

Our Board had begun the rulemaking process to initiate a program for the inspection of podiatric physician's offices and surgical areas, to ensure that they were clean, had the appropriate complaint sign in place, that the surgical area met with the requirements and standards for the safe practice of podiatry, that appropriate patient records were being maintained, etc. While in the rulemaking process, our assistant AG informed us that we might not have the statutory authority to conduct these checks. The Board then tabled the completion of the compliance inspection process, after passing some rules relating to it. During an ensuing audit of our agency, the State Auditor's Office (SAO) noted that we had rules talking about doing compliance inspections, but had not done any. Based on the above information, the SAO found that the Board should either recall the compliance monitoring rules already in place, or we should request an AG's Opinion on the issue. Based on the SAO's finding, the Board made an official request for an AG's Opinion on whether or not we had the authority to conduct compliance inspections.

On August 29, 2000, the AG issued Opinion No. JC-0274, which concluded that, "... The Texas State Board of Podiatric Medical Examiners is without authority to conduct warrantless on-site compliance inspections of its licensees or their premises." The Opinion cited possible Constitutional violation issues.

The Board feels strongly that there is a need to act proactively, to ensure that surgical sites are clean, appropriate and meet the strict standards and guidelines set by our Board, the medical community and federal and state guidelines as a patient safety issue. We are amazed that the Board of Plumber Examiners can do compliance inspections of a plumber's shop, but we cannot inspect medical practices and surgical sites, which have a substantially higher risk of causing public injury and harm.

C. Possible Solutions and Impact

The Board would like to see the necessary statutory changes made to allow us to conduct on-site compliance inspections, as noted above. This would allow us to proactively ensure safe, clean conditions in our licensee's surgical areas and appropriate compliance with our Statute and Rules. Presently, we must be totally reactive, and can only check on the above issues AFTER a problem has potentially occurred. We must be given the same ability as the Medical Board, the Pharmacy Board, the Dental Board and the ABC Board, to make the inspections and prevent surgical post-op infections, and violations of our Statute and Rules BEFORE they can occur.

A. Brief Description of Issue II

Our agency’s desperately needs to upgrade our current Investigator IV position by giving it PEACE OFFICER status, to support the type and nature of investigations being conducted on a routine basis by the Texas State Board of Podiatric Medical Examiners, and to ensure that the public health, safety and welfare is not compromised.

The scope and nature of our investigations has increased dramatically in recent years. Beyond the routine “Advertising,” “Negligence,” “Fees,” “Records,” “CME,” “Inappropriate Physician Behavior” cases the Board receives, there has been an increase in the amount and severity of the “Fraud” and “Substance Abuse/Impaired Physician” cases we investigate. These cases have been assigned a high priority and been dubbed “Major Investigations”.

B. Discussion

The ability to obtain and exchange (investigative) information expeditiously with law enforcement, other state/federal regulatory entities, will ensure that the “bad” podiatrists being investigated are dealt with in a fair and firm manner, thus minimizing the risk of additional patients being harmed. Furthermore, this information exchange will allow the Investigations Division the opportunity to fulfill all of its requirements in enforcing the Podiatric Medical Practice Act of Texas. The Texas State Board of Podiatric Medical Examiners is currently working on a “shoe-string” budget, with only one Investigator, a “part-time” Assistant Attorney General and an Administrative Operations Officer (Investigations Assistant/ Receptionist) who, due to budget constraints and the reduction in force of our agency’s Licensing Manager, is also assisting the Staff Services Officer with Licensing matters while working part-time on assisting with investigations.

Due to tough, costly lessons learned from investigating and prosecuting recent cases, it is imperative that, all “Major Investigations” begin with a “trial-ready” case file to expedite the Informal Consent Hearing & SOAH processes. To make a case “trial-ready” from the beginning, the Board must obtain the necessary records, background checks, witnesses, testimony, inspections and evidence it needs, via Subpoena, Warrant, Criminal Histories (TCIC/NCIC), with the least delay possible. Many licensees are using delaying tactics (through their attorneys) to not provide the Board with its requisite compliance. This only puts the Citizens of Texas at greater risk for continued mistreatment and jeopardizes the enforcement ability of the Podiatric Medical Practice Act of Texas.

Furthermore, as our investigator attempts to secure the assistance of other state/federal regulatory agencies and/or law enforcement, he does not always receive the response he needs for the Board’s cases as they (regulators/ law enforcement) do not view his “non-commissioned peace officer” Investigator IV position as being at their level. This presents additional and unnecessary hurdles to obtain the (investigative) respect necessary to further the Board’s investigations, for the protection of the public.

Here is a closer look at just a few of the “Major Investigations” pending closure (which are delayed due to lack of outside assistance/ problems with obtaining critical evidence):

- ☞ Dr. “A”, DPM - (FRAUD: Tens of Millions of Dollars)
- ☞ Dr. “B”, DPM - (FRAUD: Tens of Thousands of Dollars)
- ☞ Dr. “C”, DPM (FRAUD: \$200,000.00 - \$300,000.00)

Below is a sample of outside agencies involved in co-investigations with us on major cases:

<u>Category of Investigation</u>	<u>Agencies Involved</u>
1) Fraud, Drug Abuse	FBI, USHHS, DEA
2) Negligence, Advertising Fraud, Impaired Physician	FBI, USHHS

3) Negligence, Fraud	U.S. Attorney General
4) Fraud	NICB, FBI, TSBME
5) Fraud, Negligence	FBI, FDA, U.S. Postal Inspector USHHS, US Attorney General
6) Fraud, Negligence	DPS, DEA, FBI, U.S. Postal Inspectors, U.S. Attorney General
7) Negligence, Fraud	FBI, U.S. Attorney General USHHS
8) Fraud	USHHS
9) Negligence, Drug Abuse Impaired Physician	Texas District Attorney Paris, TX P.D.
10) Drug Abuse	Texas District Attorney Paris, TX P.D.
11) Fraud, Negligence	USHHS,

There will be an increasingly large volume of co-investigations being conducted on these and many new cases within the coming months (in addition to our “regular” cases). The latest word from the Federal side (F.B.I. Metroplex Health Care Fraud Task Force Meeting – February 20, 2003) is that they are ready to focus their full attention on trends/schemes of Fraud involving Podiatrists. They’re wrapping up their survey of Chiropractors and moving on to podiatrists with their list of professions.

HISTORY:

The Texas State Board of Pharmacy and the Board of Medical Examiners, through their Statute, have commissioned their Investigators as “Peace Officers” and the Texas State Board of Dental Examiners has just passed a bill this session for same, to support their enforcement efforts. The administrative, criminal, regulatory and clinical investigations that the Texas State Board of Podiatric Medical Examiners encounters are almost identical to those of the Texas State Board of Medical Examiners, the Texas State Board of Pharmacy and the Texas State Board of Dental Examiners (who are currently Peace Officers).

It is important to understand that podiatric physicians, along with M.D.’s and D.O.’s are the only medical practitioners in Texas that are allowed full hospital surgical privileges and have full prescriptive writing authority. A bad podiatrist has the potential to cause their patients serious, permanent harm and even death. It is imperative that our investigator be allowed every tool at the disposal of other similar agencies in Texas so that the investigation of our complaint cases can be facilitated in an expeditious manner and to a successful conclusion.

Since we were granted the authority to hire a full-time investigator (two sessions ago), our agency’s investigator position has always been filled by a TCLEOSE certified police officer. Because this position was not included in Article 2.12 of the Texas Code of Criminal Procedure, as having Peace Officer status, our agency’s investigator has the training but not the legislative authority to act as a Peace Officer. This is tantamount to owning a racing Ferrari, but only being able to drive it around the track with the engine turned off while being pulled by a team of mules.

Some indirect benefits of having a “Peace Officer Status” will also include the ability to obtain federal funding for (continued) Investigator/Peace Officer education, through law enforcement agencies sharing TCLEOSE approved courses. We currently must give our investigator ten to fifteen days off each year so that he can obtain the continuing

education hours needed for him to continue his TCLEOSE certification. This is necessary only because our position does not currently have Peace Officer status. When our position is given this status, our investigator will no longer be required to obtain these extra education hours and this time can be devoted to furthering our investigations. Furthermore, the ability to act as a safety/security officer during the Board's Disciplinary Proceedings will ensure the well being of the Board's staff. As you may know, death threats were made against the Board and Agency Staff on more than one occasion by podiatrists being brought into Austin for Informal Consent Hearings. Great lengths were taken to have a uniformed State Trooper and plain-clothes Texas Department of Public Safety Investigator present at these hearings to ensure the safety/security of all present. Staff safety should also be considered when traveling for agency related business, especially when conducting Office Inspections, as the Board is becoming more aggressive in its enforcement of all cases and "Major Investigations." Since the attacks of September 11, 2001, we have all heightened our sense of security and take no threat lightly. Board/Staff safety in our office is also a constant concern.

C. Possible Solutions and Impact

Our agency's Investigator position must be given Peace Officer status, the same status already granted to the investigators of the Board of Medical Examiners and the Board of Pharmacy (Board of Dental Examiners is pending current legislative initiative) for us to effectively interact with federal state and local law enforcement agencies while co-investigating our complaint investigations. Without this Peace Officer status, many of our important cases are negatively impacted and we are not receiving essential information necessary for the proper prosecution and ultimate resolution of our cases.

Our agency's investigator position has always been filled by a TCLEOSE certified police officer, but without this position having Peace Officer status, our investigator has no more authority in enforcing the Rules and Statute of this agency than does any private citizen in Texas.

We MUST be able to aggressively investigate and bring to an appropriate and speedy conclusion all acts that have the potential to cause harm to the citizens of Texas. We must be allowed to use the full potential of our investigator if we are to continue to be an effective tool to ensure quality podiatric medicine for the citizens of Texas. It is imperative that we be allowed to have Peace Officer status for our agency's investigator.

X. Comments

N/A

ATTACHMENTS

Attachment No. 1 – TSBPME enabling statute – Chapter 202, TOC

Attachment No. 2 – TSBPME Newsletter

Attachment No. 3 – TSBPME Brochure

Attachment No. 4 – Biographical Information on Policy Making Board Members

Attachment No. 5 – TSBPME Rules – Chapters 371-383 TAC

Attachment No. 6 – Legislative Appropriations Request for FY 2004-2005 and Building Block Submission

Attachment No. 7 – TSBPME Plan to reduce FY2003 spending by seven percent

Attachment No. 8 – Annual Financial Reports for FY 2000-2002

Attachment No. 9 – Operating Budget for FY 2000-2002

Attachment No. 10 – Organizational Chart

Attachment No. 11 – Quarterly Performance Reports for FY 2000-2002

Attachment No. 12 – Internal Audit Plan

Attachment No. 13 – List of Internal Audit Reports for FY 1998-2002

Attachment No. 14 – List of State Auditor Reports for FY 1998-2002