

TSBPME Case No. 04-058

**IN THE MATTER OF  
THOMAS MADDEN, D.P.M.**

**BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS**

**AGREED ORDER**

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**SITTING IN AUSTIN,**

**LICENSE No. 1105**

**TRAVIS COUNTY, TEXAS**

**AGREED ORDER**

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Thomas Madden, DPM. By letter dated March 4, 2004, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Madden of its intent to investigate complaints, concerns or reports filed against him. Dr. Madden was duly notified of the allegations against him. Dr. Madden has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Madden hereby waives his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Madden understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Madden, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Madden agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and Conclusions of Law and enters this Order:

**FINDINGS OF FACT**

1. Dr. Madden is licensed as a podiatric physician in the State of Texas (License Number 1105) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. A complaint was filed against Dr. Madden, and he was provided with notice of the complaint and with an opportunity to respond to the complaint and to show compliance with the law.
3. Dr. Madden, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board Rules and Board Orders.
4. Dr. Madden saw the patient on 12/08/2003 with a complaint of bilateral hallucal fungal nails.
5. The patient completed a patient history sheet and documented "heart problem" as

- only the past medical history.
6. Dr. Madden completed a brief physical examination which as documented in the medical records.
  7. Dr. Madden discussed a treatment plan with several optional courses of treatment.
  8. The patient elected to have total matrixectomies of the bilateral hallux nails.
  9. The procedures were done unsupervised by Dr. Madden's assistant.
  10. The patient returned on 12/18/2003 for an office visit and was seen by Dr. Madden's assistant.
  11. Dr. Madden saw the patient on 01/07/2004 and found necrotic tissue to areas because of patient non-compliance with prescribed care.
  12. Dr. Madden's assistant saw the patient as a walk-in on 01/22/2004 with complaint of a badly infected toe.
  13. The patient was seen the next day (01/23/2004) by Dr. Madden and placed on new medication.

### CONCLUSIONS OF LAW

1. Dr. Madden is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et seq., and the associated Rules of the Board, 22 Tex. Administrative Code § 371.1, et seq..
2. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
3. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
4. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
5. 22 Texas Administrative Code, §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
6. The Findings Of Fact numbers 1 through 13 establish that Dr. Madden violated: *Texas Occupations Code, §202.253(a)(12)* in that his practice allowed for: impersonating a license holder, or permitting another person to use the license holder's license to practice podiatry in this state, to treat or offer to treat, by any method, conditions and ailments of human feet.
7. The Findings Of Fact numbers 1 through 13 establish that Dr. Madden violated: *Texas Occupations Code, §202.253(a)(5)* in that he: directly or indirectly violated or attempted to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.

### ORDER

1. Dr. Madden shall pay an administrative penalty of \$500.00 (Five Hundred Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order
2. Dr. Madden shall not delegate procedures as or more invasive as nail avulsions.
3. Entry of this Order shall finally resolve any and all matters or investigations before the Board pending as of the date this Order is approved by the Board.
4. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
5. If Dr. Madden fully complies with the terms of the Agreed Order, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.
6. Failure to comply with all the terms of this order will subject Dr. Madden to further and additional disciplinary and enforcement action.

### GENERAL PROVISIONS

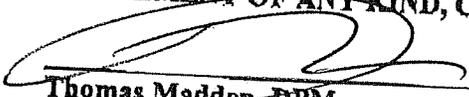
1. Effective Date. This Agreed Order shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this Agreed Order shall be valid unless in writing. No waiver of default of any terms of the Agreed Order shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et seq., the Podiatric Medical Practice Act;* and *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Madden acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Madden has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this Agreed Order by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Dr. Thomas Madden, DPM  
2207 South Clear Creek, Suite #205  
Killeen, TX 76542

Texas State Board of Podiatric Medical Examiners  
P.O. Box 12216  
Austin, TX 78711-2216

6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, THOMAS MADDEN, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.

  
Thomas Madden, DPM

7/15/05  
Date

IN THE STATE OF TEXAS

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COUNTY OF Bell

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BEFORE ME, on this day personally appeared Thomas Madden known to me, who first, being duly sworn, signed the foregoing Agreed Order in my presence.

SIGNED on this the 15<sup>th</sup> day of July, 2005.



Linda A. Riley  
(Printed Name of Notary Public)

[Signature]  
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 8<sup>th</sup> day of August, 2005, after a Board vote.

[Signature]  
Bradford Glass, D.P.M.  
Board President

[Signature]  
Jim Zukowski, Ed.D  
Executive Director