

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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In The Matter of: :

OSCAR T. NEW, D.P.M.
(Certificate No. PD047R)

No. 94-I-092-X

CONSENT ORDER

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The above-entitled proceeding was docketed for investigation by the Louisiana State Board of Medical Examiners ("Board") following receipt of information indicating that an investigation conducted by the Texas State Board of Podiatry Examiners ("Texas Podiatry Board") revealed that Oscar T. New, D.P.M. ("Dr. New"), a podiatrist licensed to practice podiatry in the states of Louisiana and Texas, but who was at all pertinent times engaged in practice in the state of Texas, was the subject of complaints by three patients who alleged that 1) his examination and procedures were inappropriate; 2) he recommended unnecessary surgery; 3) he exaggerated and/or misrepresented advantages of procedures he used; 4) he misdiagnosed conditions; 5) he failed to employ proper surgical techniques; 6) he failed to obtain informed consent; 7) he failed to perform adequate post-operative follow-up care; and 8) that he misrepresented both the cost and nature of surgery he performed. Such information further indicated that in disposition of such investigation, Dr. New entered into an Agreed Board Order with the Texas Podiatry Board which was approved on January 17, 1991. Pursuant to such Order, Dr. New's license was suspended for a period of one (1) year with all but thirty (30) days of such suspension being stayed. Such Order also imposed numerous probationary terms and conditions on his continued authority to practice podiatry in the state of Texas.¹

¹Agreed Order, *In the Matter of Oscar T. New, D.P.M.*, No. 91-11-001, pending before the Tx. St. Bd. Pod. Exam. (Jan. 17, 1991).

Such investigation further revealed that by letter of March 11, 1994, the Texas Podiatry Board provided notice to Dr. New of its intent to investigate another complaint against him. That investigation revealed that on December 18, 1991, Dr. New performed a bunionectomy on the patient's left foot when the foot had swelling and redness; in addition, fluid at the site of the initial incision tested positive for bacteria. Despite such positive culture, a follow-up examination was not scheduled with the patient until 2-3 weeks after the surgery. As a result of such investigation, the Texas Podiatry Board concluded that by performing a bunionectomy on the patient when the foot had an active infection was in violation of Dr. New's first Agreed Order and the Podiatry Practice Act of the state of Texas, as was his failure to schedule a follow-up appointment timely in the presence of a positive culture. Accordingly, Respondent entered into a second Agreed Order with the Texas Podiatry Board which suspended Dr. New's license for two (2) years, staying all but the first sixty (60) days, and prohibited him from performing surgery for an additional forty-five (45) days following his return to practice. Such Order also placed his license on probation for two (2) years pursuant to specified terms and conditions.² Finally, the instant investigation indicates that Dr. New may suffer from a permanent limitation of his vision which prevents him from engaging in the practice of podiatry.³

Investigation of the captioned matter has been assigned to John B. Bobear, M.D., the Medical Consultant/Director of Investigations for the Board. Dr. Bobear's review and analysis of the matter confirms to his satisfaction that just cause exists for recommending that a formal Administrative Complaint be filed against Dr. New, charging Respondent with violation of the Louisiana Podiatry Practice Act (the "Act") pursuant to La. Rev. Stat. §37:624(11).⁴ As evidenced by his subscription hereto, but without admitting any violation of the Act, Dr. New, nevertheless, acknowledges the substantial accuracy of the foregoing information and, further, that proof of such information upon administrative evidentiary hearing would establish grounds under the Act for the suspension, revocation, or such other action as the Board might deem appropriate against his license to practice podiatry in the state of Louisiana, pursuant to La. Rev. Stat. §37:624(11).

²Agreed Board Order, *In the Matter of O. Theodore New, D.P.M.*, No. 94-050, pending before the Tx. St. Bd. Pod. Exam. (Aug. 25, 1994).

³Affidavit, *O. Theodore New, D.P.M.*, Jan. 20, 1995, submitted to the State of Florida Board of Podiatric Medicine.

⁴Pursuant to the La. Podiatry Practice Act, La. Rev. Stat. §37:624(11), "[T]he Board may refuse to issue, suspend, or institute proceedings . . . to revoke any certificate . . . for . . . "incompetence."

Recognizing his right to have notice of any allegation or charge asserted against him, to administrative adjudication of such allegation or charge, pursuant to La. Rev. Stat. §§49:955-58, and to a subsequent final decision rendered upon written findings of fact and conclusions of law, Dr. New, nonetheless, hereby waives his right to formal charges and formal adjudication and, pursuant to La. Rev. Stat. §49:955(D), consents to entry of the Order set forth hereinafter. By his subscription hereto, Dr. New acknowledges that he hereby waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act or to which otherwise may be afforded to him by law, to contest his agreement to, or the force and effect of the Board's investigation or this document in any court. Dr. New, furthermore, hereby authorizes the Investigating Officer designated by the Board with respect hereto, as well as his legal counsel assisting him in connection herewith, to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, and he waives any objection to such disclosures under La. Rev. Stat. §49:960. Dr. New expressly acknowledges that the disclosure of information to the Board by the Investigating Officer, or his legal counsel, shall be without prejudice to the Investigating Officer's authority to file a formal Administrative Complaint against him, or to the Board's capacity to adjudicate such Complaint, should the Board decline to approve this Consent Order. Based upon the information provided, accordingly, and on the recommendation of the Investigating Officer, the Board has concluded that its responsibility to ensure the health, safety and welfare of the citizens of this state, pursuant to La. Rev. Stat. §37:611 et seq., will be effectively served by entry of the Order set forth hereinafter, by consent.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by La. Rev. Stat. §37:624 and La. Rev. Stat. §49:955(D);

IT IS ORDERED that the license of Oscar T. New, D. P. M., to engage in the practice of podiatry in the state of Louisiana, as evidenced by Certificate No. PD047R, be, and the same is hereby placed **ON PROBATION** for a period three (3) years from the effective date hereof; *provided, however*, that Dr. New's continuing exercise of the rights and privileges thereunder shall be conditioned upon his acceptance of and strict compliance with the following minimum terms, conditions and restrictions:

- a) **Opinions of Examining Physicians.** As a precondition to returning to Louisiana for the purpose of practicing podiatry, Dr. New shall provide the Board with: (1) the written opinion of two (2) physicians, acceptable to the Board, who shall opine that they have examined Dr. New and that any physical condition from which he may suffer does not prevent him from

practicing podiatry with reasonable skill and safety to patients; and (2) evidence that he has satisfied each and all of the terms imposed upon his license to practice podiatry in the state of Texas by the Agreed Board Order which he has entered into with the Texas Podiatry Board on August 25, 1994, as well as any subsequent orders.

- b) **Personal Appearance Before the Board.** In the event that Dr. New decides to return to Louisiana for the purpose of practicing podiatry at any time during or following the three (3) year probationary period, and satisfaction of the other terms and conditions imposed hereinabove, he shall contact the Board at least sixty (60) days in advance of his return to Louisiana to arrange an appearance before the Board at its next regularly scheduled meeting. At such meeting, Dr. New shall demonstrate his compliance with the probationary terms and conditions imposed upon him by this Order and the Texas Agreed Order referred to herein, and he shall discuss with the Board his intended plans for the practice of podiatry in this state.
- c) **Additional Probationary Terms.** In addition to such other terms and conditions as are placed upon his Louisiana license by this Order, Dr. New hereby consents to, agrees with and acquiesces in the imposition of any additional probationary terms, conditions or restrictions, as well as the length or nature thereof which, in the sole discretion of the Board, it may deem necessary or appropriate to impose upon his Louisiana license should he decide to relocate to the state of Louisiana for the purpose of engaging in the practice of podiatry at any time during or following the three (3) year probationary period referred to herein.
- d) **Verification by Probation/Compliance Officer.** Dr. New shall immediately notify the Board's Probation/Compliance Officer of any change in his personal and professional addresses and telephone numbers, and he shall direct all matters, requests or inquiries relating to this Order to his attention. Moreover, Dr. New shall immediately advise the Probation/Compliance Officer of any disciplinary action against his license by any other state licensing board.

IT IS FURTHER ORDERED that any violation of or failure of strict compliance with any of the terms, conditions or restrictions set forth by the Texas Agreed Order referred to hereinabove, or by this Order by Dr. New shall, upon proof of such violation or failure, be deemed adequate or sufficient cause for the suspension and/or revocation of Dr. New's license to practice podiatry or for such other disciplinary action as the Board deems appropriate, as if these violations were enumerated among the causes provided in La. Rev. Stat. §37:624.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 20 day of July, 1995.

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

BY: Keith C. Ferdinand

**KEITH C. FERDINAND, M.D.
VICE-PRESIDENT**

**ACKNOWLEDGMENT
AND CONSENT**

I, OSCAR T. NEW, D. P. M., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 6th day of July, 1995.

Oscar T. New
OSCAR T. NEW, D. P. M.

WITNESS:

Deborah J. Smith