



Michael Schottenstein, MD
President
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, Ohio 43215

Dear Dr. Shottenstein:

As you are aware, our members have expressed great concerns over the board's determination last year that certain podiatric surgical services were within a podiatrist's scope of practice. The issue at hand deals with the opinion letter that the board approved and subsequently sent to Dr. Daniel Logan, an Ohio licensed podiatrist. While we commend Dr. Logan for seeking the board's opinion before proceeding with these procedures, we disagree with the board's determination that these procedures are within an Ohio licensed podiatrist's scope of practice.

To be clear, the following determinations made by the board are in question:

Bone Marrow Aspirate Harvest from the Proximal Tibia

- Harvesting bone marrow aspirate from the proximal tibia to be used for foot and ankle surgery is within the scope of practice of an appropriately trained podiatric physician.

Supramalleolar Osteotomy of the Tibia or Fibula to Correct a Deformity

- The State Medical Board of Ohio confirmed that a supramalleolar osteotomy of the tibia or fibula constitutes ankle surgery, as defined in Rule 4731-20-02, OAC, and is within the podiatric scope of practice of an appropriately trained podiatric physician.

Our members contend that these procedures are outside the limitations placed on podiatry surgery by both the Ohio Revised Code and the Ohio Administrative Code.

According to the June 12, 2019 minutes of the board's Licensure Committee (pg. 3-4), when the board first held discussions regarding Dr. Logan's inquiries, the medical board's then-General Counsel, Sallie Debolt opined that according to Supreme Court case law and soon-to-be laws regarding the interpretation of opinion letters as laws, the board's determination on this issue could be construed as a rule change that didn't go through the proper rule change procedures. Ms. Debolt clearly stated that the "proposed rule will go out for interested party comment, then the comments will be reviewed. At that point, the proposed language will go to the Common Sense Initiative Office for another comment period, then finally to the Joint Committee on Agency Rule Review (JCARR)..."

The minutes go on to state that Licensure Committee member, Dr. Michael Schottenstein asked if Dr. Logan would have to wait for rules to be established before practicing the procedures in question. Ms. Debolt confirmed that, yes, Dr. Logan would have to wait until the rules were finalized before commencing the procedures.

Following the Licensure Committee's discussion earlier that morning, the full medical board met on June 12, 2019 and the Licensure Committee's scope determination was part of their agenda. The minutes of that meeting reflect that Dr. Bruce Saferin, Chair of the Licensure Committee, made a motion "to approve commencement of rule-making to incorporate the approved procedures as listed in the draft response to Dr. Logan's inquiry." The motion was discussed and, after much discussion about how going through the formal rule-making process "is long and arduous", Dr. Saferin decided to withdraw his motion.

It is important to note that the minutes point out that the medical board's Chief Legal Counsel, Ms. Kimberly Anderson, noted that "a new statute that takes effect at the end of August grants the Joint Commission on Agency Rule Review (JCARR) jurisdiction to order agencies to create rules if there are complaints that the agency is doing things that essentially affect the entire population of practitioners through policy and not through rule." Even after Ms. Anderson's clarification of upcoming law, the medical board voted to forego the formal rule-making process and proceed with sending the opinion letter to Dr. Logan.

It is our contention that the medical board was in error when it decided to completely ignore the warnings given by both the board's General Counsel and Chief Legal Counsel that an opinion given in letter form has the potential to be construed as a rule change that did not go through the proper rule review steps.

Based on the information provided in this letter, and our collective concern that podiatrists in Ohio may be practicing outside of their statutorily-directed scope of practice, we ask the medical board to open Ohio Administration Code Chapter 4731-20-01, Definition of foot, and Chapter 4731-20-02 Surgery: ankle joint, for proposed amendment, review, and comment.

It is our belief that opening the rules for review and comment will allow all interested parties and the proper state agencies an opportunity to carefully evaluate whether the procedures in question are within the scope of practice of an Ohio podiatrist.

We thank you for your consideration of this request.

Sincerely,

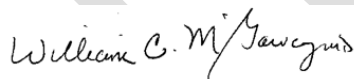
-Not Confirmed-



Patrice A. Harris, M.D., M.A
President, American Medical Association



Michael T. Archdeacon, M.D
Ohio Orthopaedic Society



William C. McGarvey, MD
President, American Orthopaedic Foot & Ankle Society®



Mehrun Elyaderani, M.D.
President, The Academy of Medicine of Cleveland & Northern Ohio

Susan Hubbell, MD

Susan Hubbell, MD

President, Ohio State Medical Association

DRAFT