

# ARKANSAS REGISTER

## Transmittal Sheet Use only for **FINAL** and **EMERGENCY RULES**



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**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Department of Health

Department Division of Health Related Boards and Commissions / Board of Podiatric Medicine

Contact Dr. John Robinette, Chair E-mail jrobpodiatry69@aol.com Phone 870-534-8500

Statutory Authority for Promulgating Rules Acts 112, 315, 820, 990, and 1011 of 2019. Also, A.C.A. § 17-96-202(a)(3)

**Rule Title:** Arkansas Board of Podiatric Medicine Rules

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Sara Farris, Asst. A.G. sara.farris@arkansasag.gov

5-20-20

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Board Chair

Title

5/20/20

Date

**ARKANSAS  
BOARD  
OF PODIATRIC  
MEDICINE  
RULES**

# ARTICLE I. APPLICATION FOR LICENSURE, RECIPROcity, AND RENEWAL

## 1. Application for Licensure

- (A) Official application forms are available on the Board's website. No application for licensure will be considered unless fully and completely filled out on this form.
- (B) An applicant must have official documentation sent to the Secretary of the Board from the National Board of Podiatric Medical Examiners that a passing score was achieved by the applicant on the American Podiatric Medical Licensing Examination (APMLE) Part I and Part II, or successor exam, of the National Board Examination.
- (C) An applicant may take the state licensing examination or submit official documentation from the National Board of Podiatric Medical Examiners of a passing score on the Part III Examination (or successor exam).
- (D) No applicant will be admitted to the state examination except on presentation of a valid driver's license or other form of government-issued photo identification.
- (E) Applications should be sent to the address provided on the Board's website.
- (F) An application fee of \$200 shall accompany the application. The fee shall be sent in form of cashier's check, personal check or money order.
- (G) The applicant will furnish with the application transcripts under seal of the college or colleges of podiatric medicine attended.
- (H) If an applicant wishes to take the state examination, an application shall be completed and filed with the Board's secretary-treasurer at least two months prior to the state Board examination, unless otherwise provided by law.
- (I) The application is subject to Arkansas law at the time of consideration of the application by the Arkansas Board of Podiatric Medicine.

(J) The state examination shall be conducted in English.

(K) All state examinations shall be conducted in the presence of at least one member of the Board.

(L) If an applicant fails to pass the state examination, the applicant may appear before the Board for not more than two examinations, both of which must be taken within a period of six months from the date the applicant's license application is denied for failure to pass the exam.

## 2. Reinstatement

An applicant who can demonstrate that he meets the following criteria may have his license reinstated upon payment of the application fee:

(A) Was previously licensed as a podiatrist at any time in this state;

(B) Held his or her license in good standing at the time of licensing;

(C) Did not have his or her license revoked for:

(i) An act of bad faith; or

(ii) A violation of law, rule, or ethics;

(D) Is not holding a suspended or probationary license in any state; and

(E) Furnish evidence of completion of the number of hours of acceptable continuing medical education computed by multiplying twenty (20) times the number of years the licensee has held an inactive or invalid license, not to exceed 100 hours.

## 3. Reciprocity

(A) Required Qualifications. An applicant applying for reciprocal licensure shall meet the following requirements:

(i) The applicant shall hold in good standing a substantially similar license in another U.S. jurisdiction.

(a) A podiatric medical license from another state is substantially similar to an Arkansas podiatric medical license if an applicant has, or the other state's licensure qualifications require an applicant to have:

(1) Graduated from a legally incorporated, regularly established school of podiatric medicine recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association; and

- (2) Completed the residency described in Ark. Code Ann. 17-96-303(d)(2).
  - (b) The applicant shall not have had a license revoked for:
    - (1) An act of bad faith; or
    - (2) A violation of law, rule, or ethics;
  - (c) The applicant shall not hold a suspended or probationary license in a U.S. jurisdiction; and
- (ii) The applicant shall be sufficiently competent in the field of podiatric medicine.
- (B) Required documentation. An applicant shall submit a fully-executed application, the required fee, and the documentation described below.
- (i) As evidence that the applicant's podiatric medical license from another jurisdiction is in good standing and is substantially similar to an Arkansas podiatric medical license, the applicant shall submit the following information:
    - (a) Evidence of current licensure in good standing in that state. The Board may verify this information online or by telephone; and
    - (b) A certificate of graduation from a legally incorporated, regularly established school of podiatric medicine recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association; and
    - (c) A certificate issued by an accredited podiatric residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association as proof of the satisfactory completion of the residency described in Ark. Code Ann. 17-96-303(d)(2); and
  - (ii) To demonstrate that the applicant has not had a license revoked for bad faith or a violation of law, rule, or ethics, as required by Article I., section 3.(A)(i)(b), and that the applicant does not hold a license on suspended or probationary status, as required by Article I., section 3.(A)(i)(c), the applicant shall provide the Board with:
    - (a) The names of all states in which the applicant is currently licensed or has been previously licensed; and

- (b) Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant's license has not been revoked for the reasons listed in Article I., section 3.(A)(i)(b), and is not on suspended or probationary status as described in Article I., section 3.(A)(i)(c). The Board may verify information online or by telephone.
- (iii) As evidence that the applicant is sufficiently competent in podiatric medicine, an applicant shall:
  - (a) Submit official documentation from the National Board of Podiatric Medical Examiners of a passing score on the American Podiatric Medical Licensing Examination (APMLE) Part I and Part II (or successor exams); and either
  - (b) Pass the Arkansas state licensing examination; or
  - (c) Submit official documentation of a passing score on the PMLexis/ Part III Examination (or successor exam).

## **ARTICLE II. PROVISIONAL LICENSE**

1. The Board shall issue a provisional license immediately upon receipt of the required fee and the documentation required under Article I., section 3.(B)(i) to show that the applicant has a license from another jurisdiction that is in good standing and is substantially similar to an Arkansas podiatric physician license.
2. An applicant shall submit a completed application with all required remaining documentation in order to receive a license.
3. The provisional license shall be effective for 90 days or, if the complete application and remaining documentation are submitted, until the Board makes a decision on the application.

## **ARTICLE III. COMPLAINTS AND DISCIPLINARY ACTION**

1. In accordance with Ark. Code Ann. §§ 17-96-308 and 25-15-217, the Board may revoke, suspend, refuse to renew, or otherwise penalize the license

of a podiatric physician after notice and hearing for any one or more of the following causes:

- (A) Is convicted of a crime listed under Ark. Code Ann. § 17-3-102;
- (B) Failure to display in the primary office the current certificates of registration;
- (C) Unprofessional and dishonest conduct, including but not limited to:
  - (i) Aiding and abetting an unlicensed person to practice Podiatric Medicine;
  - (ii) Violation of Ark. Code Ann. §§ 17-96-101, et seq; and
  - (iii) Violation of any statute, rule, or order of the Arkansas Board of Podiatric Medicine;
- (D) Habitual, intemperate, or excessive use of narcotics or any other habit-forming drugs;
- (E) Incompetent to practice medicine to such an extent as to endanger the public;
- (F) Insanity or mental disease if evidenced by adjudication or by an involuntary commitment to an institution for treatment of a mental disease or as determined by an examination conducted by three impartial psychiatrists;
- (G) Submitting false, deceptive or unfounded claims, reports or opinions to any patient or payor;
- (H) Gross, willful and continued overcharging for professional services;
- (I) Failure to report to the Board any disciplinary action, suspension or loss of privileges by a hospital, outpatient treatment or surgical facility within 30 days of such action; and
- (J) Failure to check the information in the Prescription Drug Monitoring Program when prescribing controlled substances, as required by the Prescription Drug Monitoring Program Act, Ark. Code Ann. §§ 20-7-601 et seq.

2. Any person may file a complaint with the Board against any licensed podiatric physician or unlicensed person that charges said person with having violated the Board's statutes or rules.
3. Complaints must be submitted to the Board in written form.
4. The Board may designate an individual to conduct investigations of written complaints.
5. Nothing in these rules shall prohibit informal disposition of complaints or allegations by agreement of parties
6. All hearings shall be conducted in accordance with the Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et seq.

## ARTICLE IV. OFFICERS OF THE ARKANSAS BOARD OF PODIATRIC MEDICINE AND THEIR DUTIES

1. The officers of the Arkansas Board of Podiatric Medicine shall consist of a President and a Secretary-Treasurer. They shall be elected annually by the members of the Board and shall serve a term of one year, or until their successors are elected and qualified.
2. **President.** The president shall be the chief executive officer of the Board and shall preside at all of its meetings. The president shall sign all licenses and perform such other duties as may pertain to the office. The president shall approve all requests for the expenditure of funds of the Board, and shall have power to vote on all questions coming before the Board.
3. **Secretary-Treasurer.** The following described duties of the Secretary-Treasurer may be delegated to Board staff. The Secretary-Treasurer shall be in charge of the books, records, property, and money of the Arkansas Board of Podiatric Medicine. The Secretary-Treasurer shall conduct the Board's correspondence, keep a complete and accurate record of the business transactions at all meetings and of all fees received and expenses paid under these rules and shall report the same to the Arkansas Board of Podiatric Medicine annually. The Secretary-Treasurer shall also have the following duties and responsibilities:



(A) The Secretary-Treasurer shall keep a complete record listing the names and addresses of all persons to whom licenses have been granted with the number, and the date of issuance of each license.

(B) The Secretary-Treasurer shall collect all fees and renewals, and deposit to the account of the Arkansas Board of Podiatric Medicine all money received not later than the first day of the calendar month following receipt of the money.

(C) The Secretary-Treasurer shall keep a full and complete record of all forfeited, revoked and expired licenses, and shall countersign all newly issued licenses.

(D) The Secretary-Treasurer shall receive and submit to the Board for approval all applications for licensure and shall further be required to keep a full and complete record thereof.

(E) The Secretary-Treasurer shall notify the members of the Board of the dates and places of all regular and special meetings of said Board, and shall notify applicants for licensure of the date and place of examination.

(F) Before taking possession of office, the Secretary-Treasurer shall file with the president of the Board such surety bond as may be required by the Board, the expense of which shall be paid by the Board. At the expiration of the term of office the Secretary-Treasurer shall deliver to the successor all books, records, property, and money of the Board.

(G) The Secretary-Treasurer shall receive and submit to the Board for approval all applications for license and any complaints regarding podiatric physicians that appear to be violations of these rules.

(H) The Secretary-Treasurer shall not issue any duplicate license number or reassign any number that may become vacant.

4. Other members of the Board may countersign, license, preside over meetings when necessary, and aid in conducting examinations of applicants.

## **ARTICLE V. MEETINGS OF THE ARKANSAS BOARD OF PODIATRIC MEDICINE**

1. The Board shall hold an annual business meeting. Special meetings of the Board may be called by the President, or in the absence or inability of the President to act, by the members of said Board, for the proper and efficient discharge of their duties as required by law.
2. At all meetings of the Board, three members shall be necessary for the transaction of business, and all motions must have two favorable votes in order for them to carry. At examinations only one member need be present to supervise the examination and render such service as may be needed.

## **ARTICLE VI. PODIATRIC PHYSICIAN DELEGATION**

1. Act 472 of the 87th General Assembly of the State of Arkansas, as of the year 2009, authorized Podiatric Physicians to delegate the performance of certain medical practices or tasks to qualified and properly trained employees (commonly referred to as medical assistants), who are not licensed or otherwise specifically authorized by Arkansas law to perform the practice or task. This rule will set forth standards to be met and the procedures to be followed by the Podiatric Physician when delegating to employees.
2. Definitions for Purposes of this Article VI.:
  - (A) "Podiatrist" means an individual licensed by the Arkansas Board of Podiatric Medicine as a Podiatric Physician.
  - (B) "Medical Practice" means those tasks or functions that are delegated to a qualified and properly trained employee, including the administration of drugs, pursuant to Act 472 of 2009 and this rule.
  - (C) "Delegate" means to authorize a qualified and properly trained employee to perform a medical practice that does not conflict with a provision of the Arkansas Code that specifically authorizes an individual to perform a particular practice.

(D) "Supervision" means the act by a Podiatric Physician in directing and overseeing an employee who performs a delegated medical practice.

(E) "Medical Assistant" means an employee of a Podiatric Physician who has been delegated medical practices or tasks, and who has not been licensed by or specifically authorized to perform the practice or task pursuant to other provisions of Arkansas law.

### 3. General Provisions

(A) The delegating Podiatric Physician remains responsible for the acts of the employee performing the delegated medical practice;

(B) The employee performing the delegated medical practice shall not be represented to the public as a licensed Podiatric Physician licensed nurse, licensed physician's assistant, or other licensed healthcare provider; and

(C) Medical practices delegated pursuant to this statute and rule shall be performed under the Podiatric Physician's supervision.

### 4. Procedures for Delegating a Medical Practice

Prior to delegating a medical practice or task, the Podiatric Physician shall determine the following:

(A) That the medical practice or task is within that Podiatric Physician's authority to perform;

(B) That the medical practice or task is indicated for the patient;

(C) The appropriate level of supervision for the Podiatric Physician to exercise while the medical practice or task is being performed;

(D) That the person to whom the medical practice or task is being delegated is qualified and properly trained to perform the medical practice or task; and

(E) That the medical practice is one that can be appropriately delegated when considering the following factors:

- i. That the medical practice can be performed without requiring the exercise of judgment based on medical knowledge;
- ii. That the results of the medical practice are reasonably predictable;
- iii. That the medical practice can be safely performed according to exact, unchanging directions;
- iv. That the medical practice can be performed without the need for complex observations or critical decisions; and
- v. That the medical practice can be performed without repeated medical assessments.

5. Additional Requirements for Delegating the Administration of Drugs

(A) A Podiatric Physician may only delegate the administration of drugs that do not require substantial, specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences.

(B) Administration of drugs, delegated pursuant to this rule, shall only be permissible within the physical boundaries of the delegating Podiatric Physician's offices.

(C) The Podiatric Physician shall evaluate the acuity of the patient and make a determination that delegation is appropriate.

(D) The Podiatric Physician shall determine the competency of the person to whom the administration of drugs is being delegated through training and experience, including the physician's personal observation.

6. Prohibitions

(A) A Podiatric Physician shall not transfer his or her responsibility for supervising an unlicensed person in the performance of a delegated medical practice, except to another Podiatric Physician who has knowingly accepted that responsibility;

(B) A Podiatric Physician shall not authorize or permit an unlicensed person to whom a medical practice is delegated to delegate the performance of that practice to another person;

(C) A Podiatric Physician shall not delegate to an unlicensed person the administration of anesthesia;

(D) A Podiatric Physician shall not delegate a medical practice that is not within the authority of that physician or is beyond the Podiatric Physician's training, expertise, or normal course of practice; and

(E) A Podiatric Physician shall not delegate a medical practice to an unlicensed person if the practice is beyond that person's competence.

## **ARTICLE VII.**

### **Licensure for Active Duty Service Members, Returning Military Veterans, and Spouses**

1. (A) As used in this rule, "returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

(B) "Automatic licensure" means the granting of occupational licensure without an individual's having met occupational licensure requirements provided under Title 17 of the Arkansas Code or by this Rule.

2. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:

(A) An active duty military service member stationed in the State of Arkansas;

(B) A returning military veteran applying for licensure within one (1) year of his or discharge from active duty; or

(C) The spouse of a person under Article VII., section 2.(A) or (B).

3. The Board shall grant such automatic licensure upon receipt of all of the below:

(A) Payment of the initial licensure fee;

(B) Evidence that the individual holds a substantially equivalent license in another state; and

(C) Evidence that the applicant is a qualified applicant under Article VII., section 2.(A), (B), or (C).

## **ARTICLE VIII. CONTINUING MEDICAL EDUCATION**

1. As part of the application for annual license renewal, licensees must submit to the Board proof that they completed twenty hours of approved continuing medical education within the year prior to the license renewal date.
2. A continuing medical education hour shall be considered “approved” if:
  - (A) The hour has been approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association;
  - (B) The hour was obtained when attending official meetings presented by any State Podiatric Medical Association;
  - (C) The hour was obtained from meetings approved by the Council on Medical Education of the American Medical Association or approved by the Council on Osteopathic Medical Education of the American Osteopathic Association as long as the hours pertain to the practice of Podiatric Medicine and
  - (D) The hour was obtained from hospital lectures, as long as the hour pertains to the practice of Podiatric Medicine.
3. The Board will accept any “approved” hours, as that term is defined in Article VIII., section 2 above, regardless of whether those hours are from meetings, the internet, or periodicals.
4. In addition to the methods of approval for continuing medical education hours provided in Article VIII., section 2 of this Rule, the Board may consider prior approval of meetings. Such prior approval shall be obtained from the Secretary of the Board or, if the Secretary is unavailable to consider hours for approval, a designee of the Board appointed by the President of the Board.

## **ARTICLE IX. PRESCRIBING AND DISPENSING SCHEDULE II NARCOTICS**

1. Unless otherwise stated in this Article IX., terms used shall be defined in accordance with the Prescription Drug Monitoring Program Act, A.C.A. §§ 20-7-601 et seq.

2. Dispensing Schedule II Narcotics.

A podiatric physician shall not dispense Schedule II narcotics.

3. Prescribing Schedule II Narcotics.

(A) The prescribing of excessive amounts of controlled substances to a patient including the writing of an excessive number of prescriptions for an addicting or potentially harmful drug to a patient. "Excessive" is defined as the writing of any prescription in any amount without a detailed medical justification for the prescription documented in the patient record.

(i) Chronic Pain: If there is documented medical justification, "excessive" is defined, pursuant to the Centers for Disease Control (CDC) guideline for prescribing opioids for chronic pain, as prescribing opioids at a level that exceeds  $\geq 50$  Morphine Milligram Equivalents (MME) per day, unless the physician/physician assistant documents each of the following:

(a) Objective findings, which include, but are not limited to, imaging studies, lab testing and results, nerve conduction testing, biopsy, and any other test that would establish pain generating pathology.

(b) Specific reasons for the need to prescribe  $\geq 50$  MED per day.

(c) Documented alternative treatment plans as well as alternative therapies trialed and failed prior to considering chronic opioid therapy.

(d) Documented risk factor assessment detailing that the patient was informed of the risk and the addictive nature of the prescribed drug.

(e) Documented assessment of the potential for abuse and/or diversion of the prescribed drug.

(f) That the Prescription Drug Monitoring Program had been checked prior to issuing the prescription.

(g) A detailed clinical rationale for the prescribing and the patient must be seen in an in-person examination every three (3) months or every 90 days.

(h) The definition of “excessive” as contained in this rule shall not apply to prescriptions written for a patient in hospice care, in active cancer treatment, palliative care, end-of-life care, nursing home, assisted living or a patient while in an inpatient setting or in an emergency situation.

(i) Regular urine drug screens should be performed on patients to insure the patient is taking prescribed medications and is not participating or suspected in participating in diversion or abuse of non-prescribed medications. The treatment of chronic pain shall be consistent with the CDC guidelines as they relate to baseline drug testing, and at least annual follow up testing as warranted for treatment.

(j) A pain treatment agreement must be signed and reviewed by the patient when initiating chronic opioid therapy. This agreement should discuss the following: informed risk and addictive nature of prescribed medications, outline the specific expectations between patient and physician, informed consent for periodic urine drug screenings and random pill counts with urine screening as well as the provisions for termination of opioid therapy.

B. Acute Pain: For treatment of acute pain, “excessive” is further defined as an initial prescription written for more than seven (7) days, without detailed, documented medical justification in the medical record. If the patient requires further prescriptions, they must be evaluated in regular increments with documented medical justification for continued treatment in medical record.

C. When opioids are started, clinicians should prescribe the lowest effective dosage. Clinicians should use caution when prescribing opioids at any dosage, should carefully reassess evidence of individual benefits and risks when considering increasing dosage to > 50 morphine milligram equivalents (MME)/day, and should avoid increasing dosage to > 90 MME/day or carefully justify a decision to titrate dosage to > 90 MME/day.

## **ARTICLE X. PRESCRIPTION DRUG MONITORING PROGRAM**

1. A Podiatric Physician shall check the information in the Prescription Drug Monitoring Program when prescribing:



- (A) An opioid from Schedule II or Schedule III for every time prescribing the medication to a patient; and
  - (B) A benzodiazepine medication for the first time prescribing the medication to a patient.
2. This Article X. does not apply to the following:
- (A) A licensee administering a controlled substance:
    - (i) Immediately before or during surgery;
    - (ii) During recovery from a surgery while in a healthcare facility;
    - (iii) In a healthcare facility; or
    - (iv) Necessary to treat a patient in an emergency situation at the scene of an emergency, in a licensed ground ambulance or air ambulance, or in the intensive care unit of a licensed hospital;
  - (B) A healthcare provider prescribing or administering a controlled substance to:
    - (i) A palliative care or hospice patient; or
    - (ii) A resident in a licensed nursing home facility; or
    - (iii) Situations in which the Prescription Drug Monitoring Program is not accessible due to technological or electrical failure.
3. A licensee must document in the patient record that the Prescription Drug Monitoring Program was checked.

## **ARTICLE XI. FEES**

The Board shall impose the following fees:

Initial License Fee - \$200

Annual Renewal Fee - \$75

## **ARTICLE XII. CRIMINAL HISTORY**

1. Pre-Licensure Criminal Background Check
- (A) Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
  - (B) The individual must obtain the pre-licensure criminal background check petition form from the Board.

- (C) The Board or the Board's designee will respond with a decision in writing to a completed petition within a reasonable time.
- (D) The Board's response will state the reasons for the decision.
- (E) All decisions of the Board in response to the petition will be determined by the information provided by the individual.
- (F) Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.
- (G) The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

## 2. Waiver Request

- (A) If an individual has been convicted of an offense listed in A.C.A. § 17-3-102(a), except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
  - i. An affected applicant for a license; or
  - ii. An individual holding a license subject to revocation.
- (B) The Board may grant a waiver upon consideration of the following, without limitation:
  - i. The age at which the offense was committed;
  - ii. The circumstances surrounding the offense;
  - iii. The length of time since the offense was committed;
  - iv. Subsequent work history since the offense was committed;
  - v. Employment references since the offense was committed;
  - vi. Character references since the offense was committed;
  - vii. Relevance of the offense to the occupational license; and
  - viii. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- (C) A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- (D) The Board will respond with a decision in writing and will state the reasons for the decision.
- (E) An appeal of a determination under this section will be subject to the Administrative Procedures Act § 25-15-201 *et seq.*