
Sunset Evaluation Update: Podiatrists

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 94-16
October 1994

THE AUDITOR
STATE OF HAWAII

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Submitted by

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Foreword

This report evaluates the regulation of podiatrists under Chapter 463E, Hawaii Revised Statutes. This evaluation and repeal of the chapter had been scheduled under the Sunset Law. Subsequently, Act 279 of 1994 removed the repeal date and with it the evaluation requirement. Nevertheless, since the work had already been done, we are issuing the report to help decision makers in assessing the regulatory program.

The report presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate this profession to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Medical Examiners, and others whom we contacted during the course of our evaluation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing. The law directs the State Auditor to evaluate licensing statutes scheduled for repeal to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of podiatrists under Chapter 463E, HRS, complies with policies for occupational licensing in the Sunset Law. After our work was substantially completed, Act 279 of 1994 removed the December 31, 1995, repeal date for Chapter 463E and made the chapter permanent. However, we are still issuing the report to assist decision makers in assessing the regulatory program.

Background on Podiatry

As doctors of podiatric medicine, podiatrists diagnose, treat, and prevent diseases and disorders of the foot and ankle. All states authorize podiatrists by law to perform patient care services independently within a specific scope of practice.

Education and training for podiatrists are similar to education and training for medical doctors. Generally, they receive a Doctor of Podiatric Medicine (DPM) degree after completing undergraduate education and four years in a college of podiatric medicine. Then they usually enter residency or preceptorship programs that focus on clinical practice. Specialty certification is available in podiatric surgery, podiatric orthopedics, and podiatric public health.

Hawaii has 78 licensed podiatrists, with 32 living in the state.¹

Regulatory Program

Chapter 463E places the regulatory program under the Board of Medical Examiners, which is administratively attached to the Department of Commerce and Consumer Affairs. The board consists of nine members—seven physicians and two public members. The board also regulates physicians, physician assistants, and emergency medical service personnel. The board is appointed by the governor and serves without compensation. An executive officer in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

To be licensed as a podiatrist, applicants must fulfill requirements that include passing two national examinations, being a graduate of a college approved by the Council on Podiatric Medical Education, and satisfactorily completing a residence course in podiatric medicine approved by the board.

The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous Sunset Report

Our 1992 report on podiatric medicine recommended the reenactment of Chapter 463E to continue the regulation of podiatrists but with some improvements.² We found that requirements relating to examinations for licensure needed to be clarified and that the administrative rules were overly restrictive. We also found that licensing procedures should be strengthened by checking on applicants' disciplinary history and verifying that they passed the national board examinations. Finally, we found that the board lacked adequate input from podiatrists and recommended that a podiatrist be added to the board.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of podiatrists complies with the policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate podiatrists to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on podiatric medicine and its regulation. We reviewed statutes and rules on podiatrists in Hawaii and any changes in these since our last sunset evaluation in 1992.

We also reviewed complaints and other evidence of harm to consumers. We interviewed members of the Board of Medical Examiners, personnel from the Department of Commerce and Consumer Affairs, the deputy attorney general assigned to the board, and practitioners in the field. We obtained information from the Federation of Podiatric Medical Boards, the National Board of Podiatric Medical Examiners, the American Podiatric Medical Association, the National Practitioner Data Bank, and the Hawaii Podiatric Medical Association.

At the Department of Commerce and Consumer Affairs, we reviewed files on board operations, licensing, and correspondence.

Our work was performed from January 1994 through June 1994 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We recommend that podiatry continue to be regulated. Our 1992 sunset evaluation had recommended the continued regulation of podiatrists under Chapter 463E, Hawaii Revised Statutes, and improvements to the regulatory program. In this evaluation we found that some progress has been made in implementing the prior recommendations, but more improvements can be made.

Summary of Findings

1. There is a need to continue regulating podiatrists to protect the public's health, safety, and welfare.
2. Needed rule amendments have yet to be adopted and are at the initial stage of the rule-making process.
3. The passing score for the Podiatric Medical Licensing Examination for States (PMLexis) and the requirements for endorsement need to be clarified in the rules.
4. More stringent verification of test results is still needed.
5. A podiatric advisory committee was formed only recently by the Board of Medical Examiners and its roles and responsibilities are under development.

State Should Continue to Regulate Podiatrists

The State should continue the regulation of podiatry under Chapter 463E, HRS. The practice of podiatry poses risks to the public's health, safety, and welfare.

Podiatrists can cause harm

As doctors of podiatric medicine, podiatrists are independent medical practitioners who diagnose, treat, and prevent diseases and disorders of the foot and ankle. Podiatrists may prescribe physical therapy, corrective devices, and medication; perform corrective surgical procedures; and refer patients to other medical specialists as necessary. Podiatrists who make incorrect diagnoses, fail to refer patients to physicians when appropriate, or provide incompetent treatment may cause serious physical, emotional, and financial harm.

There is evidence that podiatrists have caused harm. The previous sunset evaluation noted that in 1991, the Federation of Podiatric Medical Boards listed about 70 podiatrists nationally who had been disciplined by state boards or the federal government. The violations included failure to diagnose, failure to refer to a physician, professional incompetence, negligence, and malpractice. Podiatrists were also disciplined for drug violations, fraudulent billing practices, unlicensed activity, and false advertising.

In Hawaii, seven complaints were reported to the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs (DCCA) from 1989 through 1991. A podiatrist named in two complaints voluntarily relinquished his license after RICO charged him with not disclosing action taken by another state for purchasing a medical degree. RICO sent advisory letters to a podiatrist who had not disclosed prior disciplinary action taken by another state for billing problems, and to a medical supplier who had used the title “foot specialist” without a podiatrist license.

Since our last sunset evaluation in 1992, there have been four complaints. Two involved the same respondent and alleged that the podiatrist was negligent and also failed to renew his license. Another case involved a licensee who had not taken one of the exams required for licensure, but was granted a license in error. He was ordered to relinquish his license. RICO also sent an advisory letter to a podiatrist for failing to comply with the statutes or the rules.

All states license podiatrists

Podiatry is licensed in all states, the District of Columbia, and Puerto Rico. Every state requires applicants to graduate from an accredited college of podiatric medicine and to pass examinations. About 20 states require one year of postdoctoral training.

Needed Rule Changes Have Not Been Implemented

Our previous report recommended several amendments to the Board of Medical Examiners’ administrative rules for podiatry. These amendments have not yet been implemented. Steps to implement rule changes were initiated in early 1994.

PMLexis rules are too restrictive

Section 16-85-73.5 of the Hawaii Administrative Rules allows applicants to postpone taking the required Podiatric Medical Licensing Examination (PMLexis) only once after being scheduled for an exam. In addition, applicants forfeit the examination fee if their written request for postponement is received by the board less than 30 days prior to the scheduled exam date.

Allowing applicants only one postponement may unnecessarily restrict them from taking the examination. Also, forfeiture of the examination fee is unwarranted because the organization sponsoring the PMLexis—the National Board of Podiatric Medical Examiners—does not assess applicants for unused tests.

Applicants submit two payments to DCCA, \$300 for the PMLexis examination fee, and \$110 for DCCA's application and examination administration fee. It may be appropriate to forfeit the \$110 application and exam administration fee that pays for administrative expenses incurred in giving the exam, such as room rental, hiring of proctors, and so on. However, the \$300 PMLexis examination fee should not be forfeited to DCCA because the national board does not charge for unused tests. According to DCCA staff, the department does not intend to retain all fees. The board has proposed amendments to its rules that would give DCCA the option of deciding whether fees should be forfeited. We believe that the proposed rules could be more specific in stating that only the fee to DCCA for application and examination administration may be forfeited.

Section 16-85-73.5 also restricts applicants to retaking the exam only three times and within two years of the original exam. These conditions appear unreasonable compared to those the board has adopted for the Federation Licensing Examination (FLEX), which is used for licensing physicians. Physicians may take the test an unlimited number of times within a seven-year period. Also, the board is currently implementing the new United States Medical Licensing Examination (USMLE) for the licensing of physicians. The proposed rules allow for the USMLE applicants to pass all three steps of the USMLE within seven years with no limit on the number of times they may retake the examination.

According to the national board, each state licensing board may develop its own rules for using the PMLexis. The national organization does not limit the number of times the exam can be taken or postponed or the time period during which the exam can be taken.

The board needs to amend its rules to eliminate arbitrary and restrictive provisions relating to the PMLexis. The board should determine what a reasonable number of postponements of the PMLexis would be, and implement this by amending its rules. The rules should be amended to provide conditions for passage of the PMLexis that are not more restrictive than those established for the physician licensing exams. The rules should also be amended to limit forfeited fees to the application and exam administration fee, and not include the PMLexis fee.

Disciplinary data bank should be checked

The Federation of Podiatric Medical Boards recommends that state boards routinely request a review of the federation's data base in order to check on an applicant's disciplinary history before granting licensure. The data bank lists actions of public record taken by state boards or reported by the U.S. Department of Health and Human Services, Office of the Inspector General. The federation will verify whether adverse actions are on file and inform the state boards. The federation also sends state boards periodic reports on disciplinary cases contained in its data base.

Our 1992 sunset evaluation recommended that the Professional and Vocational Licensing Division (PVL) of DCCA request a review of the federation's data base and use the federation's periodic reports. PVL still does not utilize the federation's services. The division relies on a "Verification of License" form to obtain the applicant's disciplinary history. The form requires applicants to list all other states in which they have held a license. Should an applicant withhold information about licensure in a state in which the applicant has been disciplined, only the gap in time in the applicant's practice would alert DCCA to a possible problem with the application. It would be more reliable to use the federation's data bank to verify the status of disciplinary actions against podiatrists at the time of initial application and thereafter.

The department has been working out a fee arrangement with the federation for its services. The board is now promulgating a rule change.

The board's proposed rules include a requirement for a disciplinary history report from the federation at the time of application for licensure. We recommend that the board proceed with its rule-making without undue delay. The board, through PVL, should also make use of the federation's periodic reports as a check on licensees.

PMLexis Passing Score and Endorsement Requirements Need Clarification

The PMLexis is one of two examinations required for licensure in Hawaii. But the rules implementing the use of the PMLexis in Hawaii did not clearly establish the passing score or the requirements for endorsement of the PMLexis that applicants took in other states. This has led to some confusion for applicants.

Passing score needed in rules

The passing score or cut score for the PMLexis is not specified in the rules. Section 16-85-73.5 of the rules merely states that applicants for the PMLexis examination shall "pass with a score recommended by the PMLexis Cut Score Committee that is approved by the board." Ever since the PMLexis was implemented in Hawaii in 1990, PVL has been using the cut score of 75 recommended by the National Board of Podiatric

Medical Examiners even though the score had not been approved by the Hawaii board. The Hawaii board only recently approved the 75 cut score. Now that the score has been approved by the board, it should be clearly stated in the rules to avoid further confusion. The board has incorporated this in its proposed rule amendments.

Criteria for endorsement need clarification

Because the board had not officially approved a cut score, applicants were also unsure about the criteria for endorsement of the PMLexis taken in other states. Currently, Section 16-85-73.5 states that “the board *may* accept evidence of passage of the PMLexis in another jurisdiction in lieu of passage of the PMLexis examination administered in Hawaii” (emphasis added). Stating that the board *may* accept evidence of passage gives so much discretion to the board that there is no assurance of consistency. In addition, simply passing the PMLexis is not an assurance of consistency since states may have different passing scores. Forty-three out of fifty-two jurisdictions indicate that the criterion for endorsement of an applicant is that he or she must have been licensed in a state whose licensure requirements meet or exceed those of the given jurisdiction. This standard should be Hawaii’s criteria for endorsement of the PMLexis taken in other states and clearly stated in the rules.

More Stringent Verification of Test Results Is Still Needed

Applicants must also pass the national board examinations of the National Board of Podiatric Medical Examiners for licensure in Hawaii. To verify passage, we recommended in our prior report that the board require applicants to have the test scores submitted directly from the national board to PVL. Currently, the application form requests applicants to provide certificates containing test scores to PVL. We again recommend that the form be changed to require the test scores (certificates) to be submitted to PVL directly from the national board to ensure their authenticity. This would also conform with PVL’s practice of having applicants submit their PMLexis results directly from the national board to PVL.

Podiatric Advisory Committee Just Formed

The previous evaluation found that the Board of Medical Examiners lacked adequate knowledge about podiatric medicine and that podiatrists had no role in the licensing program. The report recommended that a podiatrist be added to the board. Although Chapter 463E was amended in 1978 to allow the board to delegate its podiatric medical duties to a committee of podiatrists, the committee that was subsequently formed to administer the state’s clinical competency examination has not met since 1990. The board finally formed an auxiliary advisory committee of five podiatrists in November 1993. The committee will be assisting the board

in addressing issues related to the practice of podiatry. The committee held its first meeting on February 16, 1994, and the board and committee are in the process of developing the committee's roles and responsibilities.

Recommendations

1. We recommend that the State continue the regulation of podiatry in Chapter 463E, Hawaii Revised Statutes.
2. The Board of Medical Examiners should amend its rules to accomplish the following:
 - a. Eliminate arbitrary restrictions with regard to the number of times applicants may retake the PMLexis within a given time period;
 - b. Require a check of the data bank of the Federation of Podiatric Medical Boards for the disciplinary history of applicants;
 - c. State the PMLexis passing score in its rules;
 - d. Specifically state in its rules that only the application and examination administration fee shall be forfeited when an applicant requests a postponement in taking the PMLexis; and
 - e. Clarify the criteria for endorsement of the PMLexis taken in other states.
3. The Board, through the Professional and Vocational Licensing Division, should:
 - a. Review the periodic reports on disciplinary cases issued by the Federation of Podiatric Medical Boards; and
 - b. Require more stringent verification of exam results for the national board examinations.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), Honolulu, February 4, 1994, p. 17.
2. Hawaii, Office of the Auditor, *Sunset Evaluation Report: Podiatrists*, Report No. 92-18, Honolulu, November 1992.

Response of the Affected Agencies

Comments on Agency Response

We transmitted a draft of this report to the Board of Medical Examiners and to the Department of Commerce and Consumer Affairs on August 5, 1994. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not respond.

The board concurs with most of our recommendations including our recommendation to continue the regulation of podiatrists; require a check of the data bank of the Federation of Podiatric Medical Boards for the disciplinary history of applicants for licensure; state the passing score for the PMLexis in its rules; not require the forfeiture of the PMLexis examination fee when an applicant requests a postponement in taking the exam; review the periodic reports on disciplinary cases issued by the Federation of Podiatric Medical Boards; and require more stringent verification of exam results for the national board examinations. The board indicates that either proposed rule amendments have been drafted or the recommendations have been implemented.

The board denies that arbitrary restrictions have been imposed with regard to the number of times applicants may retake the PMLexis within a given time period, but it does agree that candidates should be allowed an unlimited number of retakes.

The board does not agree that it should clarify the criteria for endorsement of the PMLexis taken in other states since the statutes have no provision for endorsement. However, the board says that it established a provision in the rules allowing the board to accept the PMLexis examination taken in other jurisdictions. What this means, however, is not clear from the rules. The passing score is not stated in the rules and applicants have been unsure about the criteria for endorsement of the PMLexis taken in other states. Additionally, since the rules provide that the “board *may* accept evidence of passage of the PMLexis in another jurisdiction in lieu of passage of the PMLexis examination administered in Hawaii” (emphasis added), the board has so much discretion that there is no assurance of consistency.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

August 5, 1994

COPY

Dr. William E. Iaconetti, Chair
Board of Medical Examiners
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Dr. Iaconetti:

Enclosed for your information are 10 copies, numbered 9 to 18 of our draft report, *Sunset Evaluation Update: Podiatrists*. We ask that you telephone us by Tuesday, August 9, 1994, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the board. If you wish your comments to be included in the report, please submit them no later than Tuesday, September 6, 1994.

The Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



CLIFFORD K. HIGA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF MEDICAL EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
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September 6, 1994

Marion H. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Mrs. Higa:

The Board of Medical Examiners ("Board") thanks you for the opportunity to provide comment on the Sunset Evaluation Update for Podiatrists. We will comment on the recommendations as they appear chronologically in the report.

1. "We recommend that the State continue the regulation of podiatry in Chapter 463E, Hawaii Revised Statutes."

The Board agrees that the regulation of podiatrists should be continued.

2. "The Board of Medical Examiners should amend its rules to accomplish the following:

- a. "Eliminate arbitrary restrictions with regard to the number of times applicants may retake the PMLexis within a given time period;"

We deny that arbitrary restrictions have been imposed, but do agree candidates should be allowed an unlimited number of re-takes. We have drafted proposed rules accordingly.

- b. "Require a check of the data bank of the Federation of Podiatric Medical Board for the disciplinary history of applicants;"

The Board is also in agreement with this recommendation and has drafted proposed rules which will require the submittal of a disciplinary report from the Federation of Podiatric Medical Board.

- c. "State the PMLexis passing score in its rules;"

Again, the Board is in agreement and has drafted proposed rules stating the passing score.

- d. "Specifically state in its rules that only the application and examination administration fee shall be forfeited when an applicant requests a postponement in taking the PMLexis;"

The Board agrees that the examination fee should not be forfeited and has drafted proposed rules to revise our past practice.

- e. "Clarify the criteria for endorsement of the PMLexis taken in other states."

The Board does not agree with this recommendation as it is based on a misconception that applicants may be licensed through endorsement.

There is no provision for endorsement in the Statute and therefore, no applicant may apply through that avenue.

However, in order to allow those licensed in other states to become licensed in Hawaii, the Board established a provision in their rules which allows them to accept the PMLexis examination from other jurisdictions. These applicants would still need to meet the same requirements as those taking the PMLexis in this State.

Indirectly then, this accomplishes what the Legislative Auditor had recommended in the body of her report, which was:

"Forty-three out of fifty-two jurisdictions indicate that the criterion for endorsement of an applicant is that he or she must have been licensed in a state whose licensure requirements meet or exceed those of the given jurisdiction. This standard should be Hawaii's criteria for endorsement of the PMLexis taken in other states..."

Marion H. Higa, State Auditor
September 6, 1994
Page 3

3. "The Board, through the Professional and Vocational Licensing Division, should:
- a. "Review the periodic reports on disciplinary cases issued by the Federation of Podiatric Medical Board;"

The Board agrees and has begun implementing this recommendation.

- b. "Require more stringent verification of exam results for the national board examinations."

Again, the Board agrees and has begun implementation of this recommendation.

The Board of Medical Examiners would like to thank you for the opportunity to comment on the Sunset Evaluation Update for Podiatrist.

Very truly yours,

Constance J. Carroll
for William E. Iaconetti, M.D.
Chairperson
Board of Medical Examiners