

FILED DATE - AUG 04 2017

Department of Health

By: Angela Sanders
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF PODIATRIC MEDICINE**

**IN RE: PETITION FOR DECLARATORY STATEMENT OF
LOUIS M. NEWMAN, DPM**

FINAL ORDER

THIS MATTER came before the Board of Podiatric Medicine ("Board") pursuant to Section 120.565, Florida Statutes ("FS"), at a duly-noticed public meeting held duly-noticed public meeting held by telephone conference call on July 14, 2017, for consideration of the above-referenced Petition for Declaratory Statement filed by Louis M. Newman, DPM (Petitioner) on May 11, 2017. The Notice of the Petition for Declaratory Statement was published on May 16, 2017, in Volume 43, No. 95, of the Florida Administrative Register. No comments by interested persons were received. At the hearing in this matter, Petitioner was not present and the Board was represented by Mary Ellen Clark, Senior Assistant Attorney General. Having considered the petition, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is licensed in good standing as a podiatric physician in the State of Florida.
2. Section 461.003(5), FS, states, "[p]ractice of podiatric medicine means the diagnosis or medical, surgical, palliative, and mechanical treatment of ailments of the human foot and leg."
3. Petitioner seeks to know whether the performance of physical examinations in accordance with 49 CFR 390.105(a)(1), as a certified examiner for the Federal Motor

Carrier Safety Administration of the U.S. Department of Transportation is within the scope of practice of a podiatric physician licensed, certified, or registered in accordance with Chapter 461, Florida Statutes.

CONCLUSIONS OF LAW

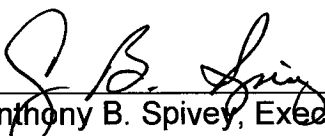
4. The Board has jurisdiction over this matter pursuant to Section 120.565, FS.

5. The Board answers the question in the negative, finding that the scope of practice included in Section 461.003(5), Florida Statutes, does not include the examination and diagnosis of conditions of **any part** of the human body, but rather “ailments of the human foot and leg.” Thus, a basic physical examination for any purpose other than diagnosis or medical, surgical, palliative, and/or mechanical treatment of ailments of the human foot and leg is not within the scope of practice of a licensed podiatric physician practicing pursuant to Chapter 461, Florida Statutes.

6. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, FS, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, by filing a notice of appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal, accompanied by the appropriate filing fee, and with the department’s clerk of agency proceedings, within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 3rd day of August, 2017.

BOARD OF PODIATRIC MEDICINE



Anthony B. Spivey, Executive Director
for, Joseph Sindone, D.P.M., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Louis M. Newman, DPM, 1740 SW 135 Way, Miramar, Florida 33027, and by interoffice mail to Mary Ellen Clark, Senior Assistant Attorney General, Administrative Law Section, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 4th day of August, 2017.



Deputy Agency Clerk

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1990

Petition for a Declaratory Statement before The Board of Podiatric Medicine

Petitioner: Louis M Newman D.P.M.

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FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK:

DATE:

Angela Obando
MAY 11 2017

The Florida Statutes regulate the Scope of Practice for Podiatrists in the State of Florida. These statutes stipulate that the "Tibial Tuberosity of the Tibia" defines the scope of practice of Podiatric Physicians". It is my understanding that this Scope of Practice for Physicians" refers to **treatment** of any and ailments below the tibial tuberosity of the tibia whether medical, surgical or biomechanical.

My understanding of The State of Florida's scope of practice statutes refers to treatment only. By Statue and License, I believe that Florida's Statues do not in any form or manor preclude a licensee from examination, and diagnosis of conditions of any part of the human body.

The federal government's Veterans Hospital System as well as many prestigious private hospitals include Podiatrists in their residency offerings. These institutions routinely include training in internal medicine and surgery as part of resident rotations.

It has come to my attention that the Federal Motor Carrier Safety of the Department of Transportation certifies Physicians or any other healthcare provider to administer very basic physical examinations to individuals seeking to be licensed to drive commercial vehicles. This examination currently includes weight, height, blood pressure, and dipstick urine analysis. Currently Chiropractors, MD's and Nurse Practitioners are eligible to be certified to perform this very basic medical examination through the U.S. Department of Transportation. Podiatrists are not currently eligible to be certified examiners.

I recently have been in correspondence with Charles Horan III, Director, Office of Carrier, Driver, and Vehicle Safety Standards. His letter to me dated April 5, 2017 state that persons must be "licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations." 49 CFR. 390.

105(a)(1). In his letter to me, Mr. Horan states "We need to determine that the applicable scope of practice for Podiatrist in the state of FI authorizes you to perform this type of physical examination of drivers of commercial vehicles that is required by FMCSA regulations, 49 CFR 391. 43. I have included the letter of Mr. Charles Horans letter as an attachment for you to examine.

If Mr. Horan III has not already contacted the board, I am requesting that the board contact Mr. Horan, Director, Office of Carrier, Driver, and Vehicle Safety Standards and answer his question in the affirmative. **Podiatrists are by virtue of hospital training and federal statute recognized as physicians. Podiatrists are by Florida statutes trained and licensed to perform full body examinations and in particular this type of very basic physical examination.** Florida's scope of practice for Podiatrists relates only to treatment, therefore Podiatrists should be included in the network of DOT examiners for the FMCSA. I look forward to hearing from the Board on this question.

Louis M Newman DPM
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