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PATRICIA GRAY
STATE REPRESENTATIVE
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COMMITTEES:
PUBLIC HEALTH, CHAIR
CORRECTIONS

RECEIVED
JUL 17 2001
OPINION COMMITTEE

July 16, 2001

FILE # ML-42074-01
I.D. # 42074

The Honorable John Cornyn
Attorney General
P.O. Box 12548
Austin, Tx 78711-2548

RQ-0404-JC

Re: Opinion request regarding authority of the Texas State Board of Podiatric Medical Examiners to adopt a definition of the term "foot."

Dear General Cornyn:

On September 22, 2000, the Texas State Board of Podiatric Medical Examiners ("Podiatry Board") proposed an amendment to its rule providing for definitions of statutory and regulatory terms. Subsequently, on January 17, 2000, the Podiatry Board adopted an amendment to 22 TAC 375.1 and promulgated a definition for the word "foot." By this action the Podiatry Board effectively re-defined the meaning of the statutory term "podiatry" as defined in Section 202.001 of the Texas Occupations Code.

The statute establishing the Podiatry Board, first enacted in 1923, has consistently defined the term "podiatry" by reference to the term "human foot," without further definition. The Legislature has not, to my knowledge, ever been asked to clarify the definition of the human foot as it relates to the practice of podiatry. Stating only that this amendment will "enhance the existing definitions," the Podiatry Board has now adopted a definition of this term which redefines the human foot as a "functional foot" to include "those structures that affect its function." The rule in its entirety provides as follows:

22 TAC 375.1
Definitions

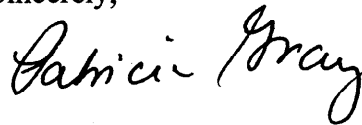
The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

...(2) Podiatrists within the state of Texas currently treat the foot and those structures which affect its function. Therefore, the foot can be defined as a functional foot. The foot is the tibia, fibula in articulation with the talus (ankle), and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia, fibula in articulation with the talus (ankle) and all bones to the toes.

I request your opinion, pursuant to Section 22 of Article IV of the Texas Constitution and Section 402.042 of the Texas Government Code, as to whether this definition of "foot" found in 22 TAC 375.1(2) is consistent with the statutory definition of "podiatry" established in Sec. 202.001 of the Texas Occupations Code and whether it is within the Board's rulemaking authority to define a term so that it effectively alters the practice of podiatry without first seeking legislative direction.

Thank you for your attention to this request. Should you require any further clarification or additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Gray".

Patricia Gray
Chair, House Public Health Committee