

STATE OF CONNECTICUT

CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

IN RE: DECLARATORY RULING REGARDING COMMERCIAL FOOT APPLIANCES

FOR THE BOARD:

Martin M. Pressman, D.P.M, Chairperson
Leo Veleas, D.P.M.
Vita C. Hardy, Public Member

DECLARATORY RULING

On April 11, 2012, the Connecticut Board of Examiners in Podiatry (“Board”) on its own motion initiated a declaratory ruling proceeding regarding “[w]hat conduct and activities fall within the exculpatory proviso in General Statutes § 20-65, which exempts from the practice of podiatry the fitting of corrective, orthopedic or arch supporting shoes or commercial foot appliances by retail merchants.”¹ (Internal quotation mark omitted.) (Board Exhibit 1.)

Notice of the Declaratory Ruling Proceeding was sent on April 1, 2012 to the following entities: the Connecticut Department of Public Health; the Connecticut Medical Examining Board; the Connecticut State Board of Chiropractic Examiners; the Connecticut State Medical Society; the Connecticut Chiropractic Association (“Chiropractic Association”); the National Commission on Orthotic and Prosthetic Education; the Connecticut Orthopaedic Society (“Orthopaedic Society”); the Department of Consumer Protection; the Connecticut Podiatric

¹ General Statutes § 20-65 provides: “Any person, except a licensed podiatrist, a licensed natureopathic physician or a physician licensed to practice medicine or surgery, who practices or attempts to practice podiatry, or any person who buys, sells or fraudulently obtains any diploma or license to practice podiatry, or any person who uses the title “podiatrist” or any word or title to induce the belief that such person is engaged in the practice of podiatry, without complying with the provisions of this chapter, upon the first conviction shall be fined not more than five hundred dollars or imprisoned not more than five years or be both fined and imprisoned, *except that nothing herein contained shall be construed to prohibit or restrict the sale or fitting of corrective, orthopedic or arch-supporting shoes or commercial foot appliances by retail merchants and no such retail merchant shall be permitted to practice podiatry without being licensed for such practice.* For the purposes of this section, each instance of patient contact or consultation that is in violation of any provision of this chapter shall constitute a separate offense. Failure to renew a license in a timely manner shall not constitute a violation for the purposes of this section.” (Emphasis added.)

Medical Association (“Podiatric Association”); the Connecticut State Board of Examiners for Physical Therapists; the Pedorthic Footcare Association; the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (“American Board”); the American, Orthotic & Prosthetic Association; and, the Connecticut Physical Therapy Association. The Notice of the Declaratory Ruling was also published on May 1, 2012 in *the Connecticut Law Journal*. (Board Exhibit 15.)

Thereafter, four entities requested and were granted intervenor status - the Orthopaedic Society (Board Exhibits 3, 7), the Podiatric Association (Board Exhibits 5, 8), the Chiropractic Association (Board Exhibits 4, 9) and the American Board. (Board Exhibits 2, 10.)

A Notice of Hearing was published on July 31, 2012, in *the Connecticut Law Journal*, scheduling a hearing for September 26, 2012. (Board Exhibit 16.) Notice was also sent to the intervenors. (Board Exhibits 7, 8, 9, 10.)

A hearing was held on September 26, 2012 before the Board, in which the following Board members participated: Martin M. Pressman, D.P.M., Board Chairman, Leo Veleas, D.P.M. and Vita C. Hardy, public member.² James S. Paolino, Esq. appeared on behalf of the Orthopaedic Society; Mary Alice Moore Leonhardt, Esq. appeared on behalf of the Chiropractic Association, Marc Korber, Esq. appeared on behalf of the Podiatric Association, and Steve Fletcher appeared on behalf of the American Board. (Transcript 9/26/12, pp. 3-4.)

The intervenors provided exhibits and pre-filed testimony, which was adopted under oath during the hearing, and the witnesses were available for questioning and cross-examination. (Board Exhibits 11-14; Transcript 9/26/12, pp. 10-11, 16-17, 24-27.)

² Raeanne Curtis, public member, was recused from participating in this proceeding.

This declaratory ruling was conducted in accordance with the Uniform Administrative Procedure Act and § 19a-9-1 et seq. of the Regulations of Connecticut State Agencies. General Statutes §§ 4-176, 4-177c, 4-178 and 4-179.

DISCUSSION AND LAW

By law, a declaratory ruling constitutes a statement of agency law, which is binding upon those who participate in the hearing and may also be utilized by the Board, on a case-by-case basis, in future proceedings before the Board concerning the practice of podiatry.

Section 20-50 of the General Statutes defines the practice of podiatry as:

[T]he diagnosis and treatment, including medical and surgical treatment, of ailments of the foot and the anatomical structures of the foot and the administration and prescription of drugs incidental thereto. It shall include treatment of local manifestations of systemic diseases as they appear on the foot. A doctor of podiatric medicine, licensed pursuant to this chapter may prescribe, administer and dispense drugs and controlled substances in schedule II, III, IV or V, in accordance with section 21a-252, in connection with the practice of podiatric medicine.

Exempted from the practice of podiatry is “the sale or fitting of corrective, orthopedic or arch supporting shoes or commercial foot appliances by retail merchants.” Conn. Gen. Stat. § 20-65; *Connecticut Chiropody Society, Inc. v. Murray*, 146 Conn. 613 (1959) (finding that the creating a well-fitting custom shoes by a retail merchant through plaster casts of customers’ feet fell within the exculpatory proviso in § 20-65, and thus did not constitute the practice of chiropody as defined in § 20-50.) Pursuant to General Statutes § 20-65, a retail merchant need not be license by the Department to sell or fit such shoes or foot appliances. Notwithstanding the above, retail merchants are nevertheless prohibited by this statutory provision from practicing podiatry without being licensed to do so. Conn. Gen. Stat. § 20-65.

In defining the contours of this exculpatory provision, the Board is mindful that exceptions from a general rule are narrowly construed in most statutory schemes. *Gault v. Commissioner of Internal Revenue*, 332 F.2d 94, 97 (2d Cir. 1964).

The purpose of this Declaratory Ruling is to delineate the conduct and activities that fall within the exculpatory proviso of General Statutes § 20-65 by unlicensed retail merchants, and thus, do not constitute the practice of podiatry. If not specifically addressed in this Declaratory Ruling, the Board will further review and decide the contours of this proviso as such matters arise on a case-by-case basis.

In issuing this Declaratory Ruling, the Board has applied its specialized knowledge and expertise in the field of podiatry. See Conn. Gen. Stat. §§ 4-178(6), (8); *Pet v. Department of Health Services*, 228 Conn. 651, 665-66 (1994). The Board finds the following conduct and activities to be permissible by unlicensed retail merchants (hereinafter “retail merchant”) under General Statutes § 20-65 (hereinafter “exempted conduct and activities”).

1. A retail merchant may sell corrective, orthopedic or arch supporting shoes or a commercial foot appliance.
2. A retail merchant may fit corrective, orthopedic or arch supporting shoes or a commercial foot appliance for customers.
3. A fitting as contemplated in paragraph 2 above includes measuring a person’s feet for size, length, width, arch height and heel position; selecting proper materials to be used in fabricating the shoe or foot appliance based on the characteristics of the person’s foot or feet; standing appraisals of a person to determine proper shoe or foot appliance selection; creation of a foot model by computer imagine, casting, foam or other form of imprint; measuring for leg length discrepancies to determining the

selection of materials to create the shoe or foot appliance; a visual inspection of the foot to determine proper selection of materials, including foot posture, the foot's angular relationship to ground (i.e., is the foot rolled in or out) and the foot's skin condition, advising the person purchasing such shoe or foot appliance on the type of shoe or commercial foot appliance needed; adjustments to or customization of the shoe or foot appliance to ensure proper fit; or fabrication of the shoe or foot appliance.

4. A retail merchant may also fit a corrective, orthopedic or arch supporting shoe or commercial foot appliance pursuant to a prescription from an appropriate health care professional. In doing so, the fitting process may involve further activities that are required to achieve the requirements of the prescription. Such activities may involve consulting with the prescribing healthcare provider to discuss different options and altering of the shoe or commercial foot appliance to conform to the prescription's requirements. All of such activities are permitted to the extent that they are within the confines of the prescription or consultation with the prescribing healthcare provider.

The Board finds the conduct and activities set forth below by a retail merchant fall outside of the exculpatory proviso of General Statutes § 20-65 and constitute the practice of podiatry under General Statutes § 20-50 (hereinafter "non-exempted conduct and activities").

1. Diagnosing, assessing and/or examining a person to determine the etiology of any ailments of the foot or ankle, including ailments to the anatomical structures of the foot.
2. Treatment of any ailments of the foot or ankle and anatomical structures of the foot beyond the mere supplying of a well-fitted custom shoe or commercial foot

appliance. *Connecticut Chiropody Society, Inc. v. Murray*, 146 Conn. 613, 618 (1959) (stating "treatment" goes beyond the mere supplying of an extremely well-fitting custom shoe).

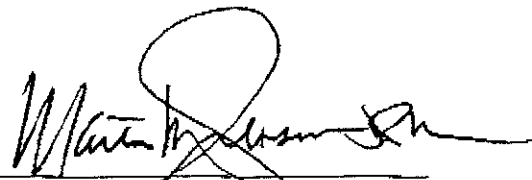
CONCLUSION

The Board issues this ruling to protect the health, safety and welfare of the public in ensuring that retail merchants operate within the limited confines of General Statutes § 20-65. As set forth above, matters not addressed in this Declaratory Ruling will be decided on a case-by-case basis by the Board as appropriate.

The Board adopts the following Declaratory Ruling and has determined that a retail merchant may engage in the exempted conduct and activities set forth above without the necessity of being licensed. The Board further determines that a retail merchant may not engage in the non-exempted conduct and activities set forth above as such conduct and activities falls outside the exculpatory proviso of General Statutes § 20-65 and thus, requires licensure.

CONNECTICUT BOARD OF
EXAMINERS IN PODIATRY

12	12	2013
Date		

By: 
Martin Pressman, DPM, Chairman