



**E. Lee Parsley, P.C.\***

221 W. 6th Street  
Suite 2000  
Austin, Texas 78701

512.481.8800 voice  
512.481.8806 fax  
lee@eleeparsley.com

April 2, 2009

Mr. Blake Hawthorne  
Clerk, Supreme Court of Texas  
201 W. 14<sup>th</sup> Street, Room 104  
Austin, Texas 78701

RE: **Cause No. 08-0485**, *Texas State Board of Podiatric Medical Examiners et al. v. Texas Orthopaedic Association et al.*

Dear Mr. Hawthorne:

Petitioners invoked the Court's jurisdiction in June of last year. After invoking the Court's jurisdiction, the Board of Podiatric Medical Examiners, with the support of the other Petitioners, began taking steps they hoped would moot the issues in dispute and divest the Court of jurisdiction. The timing and conduct of their efforts to divest the Court of jurisdiction is almost entirely within their control.

The Board of Podiatric Medical Examiners held a meeting earlier this week to discuss proposed changes to its rules. The Board considered whether to withdraw the rule that has given rise to this litigation and to adopt a new rule that would have the same effect, but use different words. Ultimately, the Board voted to make substantial revisions to its proposed new rule *and* to refer the issue to its Rules Committee for further study and revision.

The Board is not scheduled to not meet again until July 6, 2009, at which time it will consider the recommendations of its Rules Committee. Even if the Rules Committee recommends no further changes than those adopted by the Board this week, it is already certain that the substantial changes made by the Board this week will require that the proposed rules be republished for comment. Another public hearing on the proposed rules may have to be conducted. It is almost certain that this process will result in another four-month delay after the July meeting. Thus, it could be November 2009 or later before the Board's proposed new rule finally becomes effective.

In the time this case has been pending in the Court, Respondents believe podiatrists have continued to perform ankle procedures in Texas that are outside their statutory scope of practice and possibly injurious to Texas residents. They have done so in disregard of the opinion of the Third Court of Appeals issued over one year ago. Further delay in this case will not resolve the public safety concerns underlying this case.



April 3, 2009

Page 2

For these reasons, Respondents continue to believe that Petitioners should be required to either file briefs on the merits (as requested by the Court more than four months ago), or voluntarily dismiss their petitions for review. If Petitioners are ordered to file briefs, Respondents respectfully request 30 days to respond because, unless the Court orders consolidated briefing by Petitioners, Respondents will have to respond to three separate briefs filed by Petitioners.

Ultimately, Respondents believe this Court should deny the petitions because the Third Court of Appeals correctly decided that the scope of the practice of podiatry is defined by statute, and that definition is not amenable to expansion by an administrative agency charged only with enforcing the law. If the scope of the practice of podiatry is to be expanded, it must be done by the Legislature whose prerogative to do so should be vigorously protected by the courts.

Sincerely

E. Lee Parsley

cc: Thomas R. Phillips  
Jennifer S. Riggs  
Ronald L. Beal  
Mark J. Hanna  
Erika M. Kane