

ENFORCEMENT COMMITTEE
MAY 11, 2016

**SUBJECT: EXECUTIVE RESPONSE AND INTERPRETATION OF SECTION
2472 B&P**

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RECOMMENDATION

Discuss and consider executive response and interpretation of section 2472 of the California Business and Professions Code.

ISSUE

Section 2472 of the California Business and Professions Code and application to Split Thickness Skin Grafts

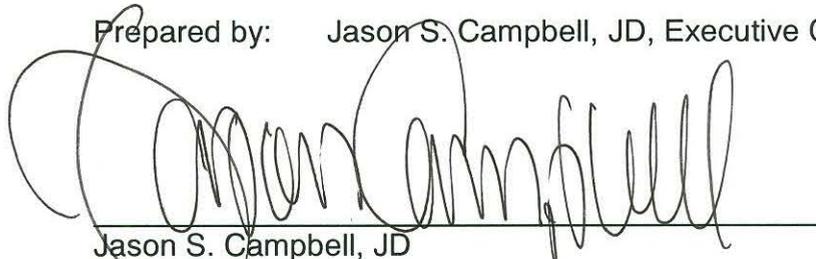
DISCUSSION

At the March 4, 2016 BPM Board meeting, members expressed concerns regarding current interpretation of section 2472 of the California Business and Professions Code as applied to Split Thickness Skin Grafts. The matter was therefore agendized for discussion at member request. The opinion is included as attachment A for member review. Board Counsel will provide advice and counsel as needed.

ATTACHMENTS

- A. Section 2472 Interpretation and Response of the Executive Office

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Executive Officer

Is a Split Thickness Skin Graft (STSG) harvested from the human thigh within the state scope of practice for Doctors of Podiatric Medicine (DPMs) in California?

As a plastic surgery technique, STSG use for traumatic wound treatment dates back centuries. In the United States, it has historically not only been used for plastic surgery reconstruction but also for treatment of burn wounds and chronic ulceration associated with diabetic foot patients. It is a widely accepted and well-known treatment modality involving the harvesting of dermal and epidermal tissue from a donor site for transfer, application and coverage of open wounds.

The podiatric scope of practice is contained in section 2472 of the California Business and Professions Code (B&P). It defines podiatric medicine to include the diagnosis and treatment of all medical conditions of the foot, ankle and related structures including the tendons that insert into the foot and the non-surgical treatment of the muscles and tendons of the leg. Surgical treatment of the ankle and tendons is authorized at the level of the ankle.

It is recognized that California DPMs play a foundational role in the treatment of foot and ankle pathologies and all attendant podiatric complications frequently associated in diabetic populations. While limited to their area of expertise by the law itself, DPMs in California are charged to use their competence and training to appropriately treat Californians. Therefore, within scope, California podiatric doctors are fully licensed, authorized and expected to use all means and modalities to treat any and all podiatric conditions affecting the lower extremity subject to the community standard of care and a professional's training and competence. Accordingly, it is beyond question that STSG harvested from a donor site within DPM surgical scope may be performed by a licensed DPM as medically appropriate for treatment of foot and ankle pathology. However, surgical treatment above the ankle is not specified in the scope of practice as currently codified. Therefore, as currently written, section 2472 would preclude surgical procedures on the leg even if to treat pathology manifesting on the foot or ankle. This can be concluded for several reasons.

The Legislative history of section 2472 demonstrates that the human leg was intentionally excluded from the scope of surgical practice for a doctor of podiatric medicine. Subsequent statutory amendments in 1983 narrowed the surgical exclusion by including the ankle and tendons which insert into the foot within the surgical scope. Treatment of the muscles and tendons of the human leg remained limited to nonsurgical means. Later scope of practice amendments codified in 2004, explicitly limited surgical scope to the level of the ankle alone. Borrowing from accepted canons of statutory construction is the principle that the expression of particular things in a statute necessarily involves the exclusion of other things not expressed. Perhaps, more specific is the fact that "[i]n the grants [of powers] and in the regulation of the mode of exercise is an implied negative: an implication that no other than the expressly granted power passes by the grant; that is to be exercised only in the prescribed mode." *Martello v. Superior Court*, 202 Cal. 400, 405, 261 P. 476, 478 (1927), quoting 1 Sutherland, *Statutory Construction* § 249 (2d.Ed.).

The statutory scope of practice may be said to be equivalent to a grant of power from the State to individuals deemed qualified to exercise it. Thus, surgical treatments and/or portions of

human anatomy not included within the grant are excluded by implication. In this case, these include surgical treatments on the leg falling above the level of the ankle. To be sure, STSG falls within the ambit of surgical procedures. This modality involves techniques used to penetrate human tissue anywhere from .008 to .02 inches depending upon setting. STSG in care and treatment of diabetic wounds is not without complications and unique concerns such as endothelial dysfunction, lowered chemotaxic response as well as other systemic challenges faced by all surgeons including patient specific obstacles such as poor nutrition, smoking history and risks of noncompliance lead many podiatric surgeons to elect conservative care for challenging wounds. Thus, it cannot be doubted that STSG is a surgical modality. It is in fact a plastic surgery technique.

Having said this, it is well understood that STSG has been an integral component taught in podiatric medical training and available as part of the podiatric medical literature for many years. It is also recognized that some facilities may in fact privilege some podiatric doctors demonstrating the requisite education, training and competence in the modality to perform STSG. It is well settled, however, that scope of practice is neither controlled by the customs or practices of the medical profession nor expanded by consideration of a medical professional's knowledge, skill or experience or what is taught in the medical schools. Statutory interpretation is purely a question of law. At the present time, given the current statute, performing an STSG harvested by a DPM from the human thigh would exceed the existing scope of podiatric medical practice. The community standard of care as noted by BPM's expert panel of podiatric medical consultants is in accord with this reading. As such, STSG is only permitted within the existing boundaries of the human body as contemplated by section 2472. While scope may only be modified through the Legislative process, participation in proposed statutory amendment processes is always encouraged.