



Janet Napolitano
Governor

State Of Arizona Board of Podiatry Examiners
"Protecting the Public's Health"

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Barry Kaplan, DPM; Joseph Leonetti, DPM; Dedrie Polakof, DPM; Paula Hollins, Public Member;
Jeanne Reagan, Public Member, Dee Doyle, Executive Director

REGULAR SESSION MINUTES
Board Meeting

April 9, 2008 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

Board Members: Dedrie Polakof, D.P.M., Board President
Joseph Leonetti, D.P.M., Member
Barry Kaplan, D.P.M., Member
Paula Hollins, Secretary-Treasurer
Jeanne Reagan, Public Representative

Staff: Dee Doyle, Executive Director

Assistant Attorney General: Keely Verstegen

A. CALL TO ORDER

The Board President called the meeting to order at 8:35 A.M.

B. ROLL CALL

Dr. Polakof, President called the roll. Dr. Leonetti arrived at 8:36 am and Ms. Hollins arrived at 9:25 am.

C. APPROVAL OF MINUTES

Pursuant to A.R.S. § 38-431.03(A) (2), any discussion of the executive session minutes will take place in executive session.

1. March 12, 2008 Regular Board Meeting Minutes
2. March 12, 2008 Executive Session Minutes

MOTION: Ms. Reagan moved to approve the March 12, 2008 regular session minutes with the following amendment:

1. Strike the last sentence on page two, first paragraph regarding complaint No. 07-39-C

Dr. Kaplan seconded the motion.

VOTE: The Motion Passed unanimously 4 yes, 0 no, 1 absent

MOTION: Ms. Reagan moved to approve the Executive Session meeting minutes as written for March 12, 2008, Dr. Polakof seconded the motion.

VOTE: The Motion Passed unanimously 4 yes, 0 no, 1 absent

D. REVIEW, DISCUSSION AND POSSIBLE ACTION ON REGULATORY MATTERS.

Pursuant to A.R.S. § 32-852.01 the Board will conduct an Investigation. The board on its own motion may investigate any evidence which appears to show that a podiatrist is or may be guilty of a violation of Section A.R.S. § 32-852. The Board may vote to go into Executive Session pursuant to A.R.S. § 38-431.03(A) (2) (to discuss confidential information), A.R.S. § 38-431.03(A) (3) (to receive legal advice).

1. INVESTIGATIVE INTERVIEW

1. 05-36-C GEORGE N. THOMPSON –Continuance from March 12, 2008 **Investigative Interview 8:30 a.m. – continued until May 14, 2008.**
2. 06-03-C GEORGE N. THOMPSON- **Investigative Interview 8:30 a.m.**
3. 06-11-C GEORGE N. THOMPSON- **Investigative Interview 8:30 a.m.**
4. 06-28-C GEORGE N. THOMPSON- **Investigative Interview 8:30 a.m.**
5. 07-36-B GEORGE N. THOMPSON- **Investigative Interview 8:30 a.m.**

At a previous meeting, the Board tabled the investigative interview for George N. Thompson, DPM to give him time to obtain a legal advisor.

Dr. Thompson, has not retained an advisor as yet, he asked for a further continuance to obtain a legal advisor, the Board granted the continuance until the May 14, 2008 board meeting.

6. 07-11-C J. DAVID BROWN – The Board will interview Dr. Mary Peters, consider and possible action regarding the complaint investigation on Dr. Brown – April 9, 2008, 8:30 am

At a previous meeting the Board tabled the anonymous complaint filed against J. David Brown, DPM to investigate the complaint further.

Dr. Mary Peters was present at the Board meeting and represented by her attorney Bruce Crawford for an interview regarding Dr. Brown's case.

Dr. Polakof, asked Dr. Peters to reiterate the incident with her calling in a prescription for Dr. Brown. Dr. Peters stated she received a call from her office staff stating "Dr. Brown fell and was in a lot of pain with his knee. Dr. Peters stated she tried to get Dr. Brown to also seek emergency attention, and he refused so Dr. Peters gave the authorization to call in a minimum supply of pain medication for Dr. Brown. Dr. Peters stated she did not give a specific number of pain medication to be filled nor did she give any refills. Dr. Peters stated she had the office staff help her with calling in the prescription because she doesn't call in prescriptions and she wasn't aware how to proceed. Dr. Peters did not phone in the prescription; the office staff did per her authorization to call in a minimum amount of a pain medicine, but did not know which one or the amount. Dr. Peters stated she transcribes her own notes; the staff doesn't have access to them.

The Board asked, Dr. Peters if she had called in the Norco prescription with 2 refills, she said she had not and wasn't aware one had been called in until after the first board interview. Dr. Peters stated she went to the pharmacist in her building two months ago to inquire about the prescriptions that were called in for Dr. Brown. Dr. Peters stated she was told one prescription was called in with 2 refills. Dr. Peters did not inform the Board of this information until the interview today.

Dr. Peters stated no traditional, initial patient information forms were filled out by Dr. Brown when she treated him as a patient to establish him as a patient. She treated Dr. Brown's knee and thigh with pain medication which is outside the scope of practice.

Dr. Peters stated she was unaware of a prescription being called in using her DEA number for Dr. Brown for Norco with 2 refills. She had only authorized on the one day that pain medication be called in with no refills for the one day she stated above when Dr. Brown hurt his knee. Dr. Peters suggested Tylenol 3 or a lesser medication not a narcotic, but she stated that she left the decision making to the office staff as to the medication to be called in for a minimal amount with her authority.

Dr. Peter's, stated when she checked with the pharmacist about the called in prescription that staff had called it in and also picked up the medication. She was surprised to find out what was called in.

The Board asked Dr. Peters if she followed up with Dr. Brown after the phone call incident, she said, she asked Dr. Brown if he was following up on treatment of his knee, Dr. Brown told Dr. Peters when they were golfing Dr. Brown stated his knee was ok. Dr. Brown indicated that he was following up with Dr. Roffi in Chandler.

No documentation of the prescription that Dr. Peter's authorized to be called in is in the chart.

MOTION: Dr. Polakof moved to go into Executive Session to obtain legal advice at 9:06 am
Dr. Leonetti seconded the motion.

VOTE: The motion passed unanimously 4 yes, 0 no and 1 absent

The Board convened Executive Session at 9:06 am
The Board returned to Regular Session at 9:12 am

MOTION: Dr. Polakof moved to open a board complaint against Mary Peters, DPM violation to A.R.S. 32-871 (A) (2), 32-854.01(11) and 32-854.20 for prescription charting, treating outside scope of practice and practices harmful to patient. Dr. Leonetti seconded the motion

VOTE: The motion passed 4 yes, 0 no and 1 absent

Mr. Bruce Crawford requested permission to address the Board. He stated, "You all are in big trouble, Dr. Peters was called in for an investigative interview for the second time. I wrote – prior to this interview for more specific information on what this interview was for. The first time Dr. Peters was here, everything was dismissed, now this. You are all in big trouble. I want a copy of the tape from the last meeting and this meeting."

Dr. Kaplan informed Mr. Crawford that the Board does not tape the sessions.

7. 07-37-M BRANDON KIM - Investigative Interview April 9, 2008, 8:30 am

At a previous meeting, the Board tabled the investigative complaint against Brandon Kim per requests from his attorney due to his unavailability and moved to hold an Investigative Interview pursuant to A.R.S. §32-852.01 and 32-854.01(16) (20).

Dr. Kim was present and represented by legal counsel Edward Ladley.

Mr. Ladley provided the Board with a complete copy of the case file on CD's in December 2007. Dr. Leonetti attempted to review the CD's provided however; several of the files could not be opened. Dr. Leonetti stated that all of the files need to be reviewed. He asked Mr. Ladley to provide paper copies for the files to be reviewed.

Mr. Ladley stated he would provide the complete copy of the file in paper form.

Dr. Leonetti gave staff a list of the files that couldn't be opened to send to Mr. Ladley.

The Investigative Interview was tabled until the May 14, 2008 meeting pending receipt of the requested copies.

8. 07-38-M MARK GORMAN - Investigative Interview April 9, 2008, 8:30 am-continued till May 14, 2008

Bruce Crawford, Attorney to Dr. Gorman asked for a further continuance till May 14, 2008. This matter was tabled until May 14, 2008.

2. INITIAL REVIEW

a) 08-01-C KELVIN CREZEE – Review, discussion and possible action on complaint

The Board is in receipt of a complaint filed against Kelvin Crezee, DPM initiated by is patient, J.K. The Board is also in receipt of the doctor's written response, and some of the patient medical records.

The complainant alleges practice below the standard of care and treatment, i.e. Dr. Crezee injected cortisone shots (1 week from her first visit) in both feet which caused her foot condition to worsen.

Following discussion, the Board requested further documentation from the following:

1. Dr. Crezee, Estimate Of Benefit form and the Billing to insurance
2. Patient Medical records from Dr. John Kozak
3. Patient Medical records from Dr. Steen Johnson
4. Patient medical records from J. David Brown, DPM

b) 08-02-C ROBERT ZOBEL - Review, discussion and possible action on complaint

The Board is in receipt of a complaint filed against Robert Zobel, DPM initiated by is patient, K.L. The Board is also in receipt of the doctor's written response, and the patient complete medical records.

The complainant alleges practice below the standard of care and treatment, i.e. Dr. Zobel's office staff had a miscommunication as to possible industrial injury she had at her initial appointment.

Following review of the patient records and discussion, it appears at the initial office visit the patient did not state this was a "work related injury" causing additional forms to be filled out and authorization to be obtained before the initial appointment. It appears to be a miscommunication issue and is not related to treatment or care.

MOTION: Dr. Leonetti moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Dr. Kaplan seconded the motion.

VOTE: The motion passed 5 yes, 0 no

The Board based their decision to dismiss following review of the complete patient medical record. The Board concluded that the quality of care and treatment rendered was with in the standard of care.

3. OPEN COMPLAINTS

- a) 07-39-C ELAINE SHAPIRO – Review, discussion and possible action on additional records requested from Dr. Shapiro

The Board is in receipt of a complaint filed against Elaine Shapiro, DPM initiated by complainant J.B. The Board received the complete medical records from the doctor.

The Board tabled the complaint filed against Elaine Shapiro at the March 12, 2008 board meeting and requested documentation from the seminar she attended for the Simplified Technique for Phenol Nail Surgery.

Dr. Shapiro sent the Board a DVD on the Phenol Nail Surgery procedure she attended from Podiatry Institute.

Discussion and The Board reviewed the DVD provided by Dr. Shapiro, Dr. Leonetti validated the procedure was recognized and treated accurately.

MOTION: Dr. Polakof moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Dr. Leonetti seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no

The Board based their decision to dismiss following review of the complete patient medical records. The Board concluded that the quality of care and treatment rendered was within the standard of care.

- b) 08-03-C ELAINE SHAPIRO – Review, discussion and possible action on records received from Dr. Shapiro

The Board is in receipt of a verbal complaint filed against Elaine Shapiro, DPM initiated by G.S and S.S.

Elaine Shapiro, DPM was present at the board meeting and represented by Edwin M. Gaines her Attorney. Mr. Gaines gave the Board confidential medical records regarding this case to review.

The Board tabled this matter until the May 14, 2008 board meeting to review the records provided.

- c) 07-32-B SERJIK NAZARIAN – Review, discussion and possible action on records received from Verde Valley Medical Center per Order of Consent Agreement

The Board is in receipt of the required medical records to audit from the month on March according to the consent agreement.

- d) 07-45-C GILBERT SHAPIRO- Review, discussion and possible action on report received from Dr. Chairello

At a previous meeting, the Board tabled the complaint filed against Gilbert Shapiro, DPM initiated by his patient A.Z. for further investigation. The Board requested a subpoena be sent to Dr. Charillo, DPM for a copy of the pathology report on this case.

The complainant alleges practice below the standard of care and treatment following surgery. She also alleges that Dr. Shapiro did not follow up when she complained of excessive pain after her surgery.

MOTION: Dr. Polakof moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Dr. Leonetti seconded the motion

VOTE: The motion passed unanimously 5 yes, 0 no

Following review of all of the patient records and discussion by the Board the decision to dismiss upon review of the complete patient medical records. The Board concluded that the quality of care and treatment rendered was within the standard of care.

- e) 07-47-C ARLENE POLAKOF- Review, discussion and possible action on x-rays received from Arlene Polakof DPM

At a previous meeting, the Board tabled the complaint filed against Arlene Polakof, DPM initiated by an anonymous complaint for further investigation. The Board requested a subpoena be sent to Dr. Polakof, DPM for a copy of the X-rays on the patients listed in the complaint.

The complainant alleges practice below the standard of care and treatment following surgery. The complainant also alleges that Dr. Polakof failed to notify the Board of the mal-practice case.

Following discussion and Board review of the records, the Board determined that Dr. Polakof did inform the Board of this case on her renewal application. The X-rays per a letter received from Cigna Healthcare indicate the films were not in the jackets, upon investigation the films were requested by the patient and not returned.

Dr. Polakof recused herself from the investigation because she is related to the doctor in this case.

MOTION: Dr. Leonetti moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Dr. Leonetti seconded the motion

VOTE: The motion passed 4 yes, 0 no and 1 abstained from Ms. Reagan

The Board based their decision to dismiss following review of the patient medical records. The Board was not able to view the x-ray films they were unavailable. Motion was made to dismiss, the documentation was complete except for the x-rays and not outside the standard of care.

4. STATUS UPDATES – no action information only

- a) 05-27-M ELAINE J. SHAPIRO – Update on status of litigation

This matter is still in litigation, to be heard in May of 2008, the matter was tabled pending the outcome of the litigation.

- b) 06-04-C ALAN GAVECK – Update on status of litigation

This matter is still in Superior Court, a decision has not been received from the oral argument yet to date, and the matter was tabled pending the outcome.

- c) 06-22-M ANDREW LOWY- Update on status of litigation

This matter is still in litigation, the matter was tabled pending the outcome of the litigation

- e) 07-28-C KENT PETERSON – Update on status of litigation

This matter was tabled at a former meeting pending the outcome of a Medicare investigation, a status report was received by Edwin Gaines, Dr. Peterson attorney that a settlement has not been reached yet.

E. DISCUSSION AND CONSIDERATION AND POSSIBLE ACTION ON ADMINISTRATIVE MATTERS

The Board may vote to go into Executive Session pursuant to A.R.S. § 38-431.03(A) (2) (to discuss confidential information), A.R.S. § 38-431.03(A) (3) (to receive legal advice).

MOTION: Dr. Polakof moved to go into Executive Session to review confidential exam content 10:18 am
Dr. Kaplan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no.

The Board convened Executive Session at 10:18 am

The Board returned to Regular Session at 10:25 am

- a) June 10, 2008 examination – confidential, review, consider and possible action on exam material

MOTION: Dr. Polakof moved for the Board to issue an oral exam based on the Arizona Revised Statutes and Rules, if an applicant fails they will have to re-apply and take the exam again. Dr. Kaplan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no

b) Executive Director up date report –

1. Governor's proposed administrative consolidation

Ms. Doyle the executive director updated the Board on Tracy Hannah's proposal to consolidate administrative, financial, technology and office restructure under the Arizona Department of Administration.

2. Boards and Commissions Semi-Annual Public Member Service Orientation Training Session-information

All of the Board members have taken the service orientation training.

3. Proposed legislation HB 2640

Ms. Doyle, executive Director notified the Board of the proposed legislation on HB 2640 and what it means to the Board members.

4. Renewal Application updated, review, consider and possible action of proposed changes.

The Board reviewed the changes to the renewal application. The application form will go out as proposed at the upcoming renewal.

MOTION: Dr. Polakof moved to approve the updated changes to the renewal application, Dr. Kaplan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no

5. Proposed Rule changes on fee's – review, consider and possible action

Executive Director, Dee Doyle, presented the Board with a detailed and informative expenditure and revenue analysis of the FY2008 budget along with financial projections through FY 2009. Statistical information was also presented in an attempt to inform the Board of the need to build a larger budget for the next several years that will give them the necessary financial structure needed to meet their statutory mandate of protecting the health, safety and welfare of the public, and meeting the mandates of Arizona state government. Ms. Doyle informed the Board that the current fee structure would need to be increased.

MOTION: Dr. Polakof moved to increase the following fees in an attempt to meet the budget for the next several years that will give them the necessary financial structure needed to meet their statutory mandate of protecting the health, safety and welfare of the public, and meeting the mandates of Arizona state government. Dr. Kaplan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no.

Proposed fee's to be increased pursuant to R4-25-103. 1, 2, 3, 4 and 6 are as follows:

- a. Application for examination pursuant to A.R.S. § 32-822(A) and 32-825, \$750.00
- b. Application for examination pursuant to A.R.S. § 32-827, \$750.00
- c. License issuance, \$300.00
- d. Annual renewal, \$300.00
- e. Certification of a licensee to authorities of another state or country, \$50.00
- f. The Board establishes and shall collect the following charges for the services specified: records under A.R.S. § 39-121.01 or 39-121.03:
 - a. Written or certified license verification: \$10; and duplicate or replacement renewal receipt: \$10.00

6. Five year Rules review - review, consider and possible action

Ms. Doyle informed the Board that the five-year rules review is due; the Board will look over the rules for any proposed changes.

F. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON CORRESPONDENCE -

The Board may vote to go into Executive Session pursuant to A.R.S. § 38-431.03(A) (2) (to discuss confidential information), A.R.S. § 38-431.03(A) (3) (to receive legal advice).

1. Correspondence received from Dr. Ruediger Schneider and Christine Child – “A Closer Look at Homeopathic Modalities for Joint Pain.”

Correspondence was information only, no action needed to be taken.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION ON APPROVAL TO TAKE EXAMINATION IN JUNE 2008.

The Board may vote to go into Executive Session pursuant to A.R.S. § 38-431.03(A) (2) (to discuss confidential information), A.R.S. § 38-431.03(A) (3) (to receive legal advice).

Jason Anderson
Valerie Schade

Allison Cheney
Cheresa Thomas-Ramoutar

Ronald Belczyk

Tosha Klotsbach

MOTION: Dr. Kaplan moved to approve the applicants listed above to take the June 10, 2008 oral exam. Ms. Reagan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no

H. CALL TO THE PUBLIC

Citizens who want to address the Board do not need to request permission in advance, but they do need to complete a “Citizen’s Request to Speak to the Board” form so that the Board is aware that they are here and that they want to speak to the Board. Each person who wants to address the Board will be given five (5) minutes to do so. However, the Board may limit the number of persons speaking on each issue to a reasonable number of persons. Pursuant to A.R.S. § 38-431.02(H), the Board can discuss or take action ONLY on matters that are listed on the Agenda. Board action on issues that are not listed on the Agenda is limited to directing staff to study the matter or to schedule the matter for further discussion at a future Board Meeting.

No public was present to address the Board.

I. EXECUTIVE SESSION FOR UPDATE DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON ADMINISTRATIVE CONFIDENTIAL AUDIT MATTERS

The Board may vote to go into Executive Session pursuant to A.R.S. § 38-431.03(A) (2) (to discuss confidential information), A.R.S. § 38-431.03(A) (3) (to receive legal advice).

1. Auditor General update

MOTION: Dr. Polakof moved to go into Executive Session for confidential audit matters at 11:12 am. Dr. Kaplan seconded the motion.

VOTE: The motion passed unanimously 5 yes, 0 no

The Board convened Executive Session at 11:12 am

The Board returned to Regular Session at 12:07 pm

J. FUTURE AGENDA ITEMS.

None requested.

ADJORNMENT

There being no further business before the Board, the meeting was adjourned at 12:08 p.m.

NOTE: Next Meeting Date: May 14, 2008

APPROVED:
Dedrie Polakof, DPM
Board President