



Douglas A. Ducey
Governor

State Of Arizona Board of Podiatry Examiners
"Protecting the Public's Health"
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Barry Kaplan, DPM; Joseph Leonetti, DPM; Barbara Campbell, DPM;
M. Elizabeth Miles, Public Member; John Rhodes, Public Member

Final Regular Meeting Minutes

September 9, 2015

8:30 a.m.

1400 West Washington St., B-1
Phoenix, AZ 85007

Board Members present: Barbara Campbell, D.P.M, President
Barry Kaplan, D.P.M., Member
Joseph Leonetti, D.P.M., Member
John Rhodes, Public Member, Secretary-Treasurer

Board Members absent: M. Elizabeth Miles, Public Member

Staff present: (Acting) Margaret Whelan, Executive Director, Arizona State Board of Optometry

Assistant Attorney General: Frankie Shinn-Eckberg

A. CALL TO ORDER

Dr. Campbell called the meeting to order at 8:35 a.m.

B. ROLL CALL

All board members were present except for public member Ms. Miles. Acting staff Margaret Whelan was present and Assistant Attorney General Frankie Shinn-Eckberg was present.

C. PRESIDENT'S REPORT

Dr. Campbell reported that there were some changes at the Arizona Department of Administration Human Resources. Ms. Rokkos was promoted and has left the agency and Ms. Maves has left state service.

D. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PERSONNEL MATTERS REGARDING THE EXECUTIVE DIRECTOR POSITION:

The Board, upon a majority vote of a quorum of the members, may also hold an Executive Session on items to interview, discuss, consider, and take possible action on personnel matters.

1. Approval of job posting for Executive Director position

Ms. Whelan presented the Board with a draft job posting for their Executive Director position. Dr. Campbell asked that the Board possibly request a writing sample, whether they were interested in a probationary period, and that the job posting stated that the position "serves at the pleasure of the

Board". Ms. Whelan informed the Board that she intended to post the job for 10 days with the approval Board.

MOTION: Dr. Campbell moved to approve the job posting has visited by Ms. Whelan. Dr. Leonetti seconded the motion.

VOTE: Motion passed 4-0.

E. REVIEW, DISCUSSION AND VOTE ON INVESTIGATIVE REVIEWS/COMPLAINTS:

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

2. 11-16-M Aprajita Nakra, D.P.M.

Dr. Polakof, investigator for the Board, presented the case as the doctor performed three surgeries on the patient. There were four allegations including: HIPAA violation, medical records were requested on three separate occasions in 2013 and not provided, falling below the standard of care due to not treating conservatively prior to performing surgery and surgical treatment not appropriately performed with a poor outcome due to no conservative care. All four allegations have been substantiated by Dr. Polakof. A major concern of the Board is that Dr. Nakra wanted to stage the surgeries. A court deposition on March 8 and March 9, 2008 shows three dates of surgery scheduled on March 6, 2008, March 7, 2008 and October 20, 2009. Patient saw Dr. Zhang who saw the patient was in trouble and sent him to Dr. Meyerson in Baltimore, MD for a second opinion. Dr. Meyerson noted that surgery was not appropriately performed by the first surgeon. Dr. Kaplan asked why Dr. Nakra did not attempt conservative care. Dr. Nakra was not present at the Board meeting but told Dr. Polakof in her interview that the patient was doing it on his own. Dr. Leonetti asked what exactly Dr. Meyerson did for the patient to which Dr. Polakof responded graft and cut the Achilles. It was noted in the chart that Dr. Nakra did not concur with treatment by Dr. Meyerson. Litigation was found in favor of the complainant. The patient was present with Counsel Mr. German to address the Board. Patient stated he had an MRI in 2008 which shows how the Achilles was cut; 1.5 years later shows torn, unhealthy Achilles. Patient had gastrocnemius resection and saw Dr. Nakra 10 times and did physical therapy prior to the next surgery. Patient felt that surgeries not done in proper order for benefit of patient but for financial gain. There appeared to be improper billing and documentation; several records requests made- no response to provide records from Dr. Nakra. The patient had sprained ankle with no deformity. Surgery wasn't warranted and doctor cut Achilles tendon. Dr. Campbell asked if the patient was ever on steroids; he stated no. She asked how he was now. Patient replied he was in constant pain. Dr. Leonetti asked if the patient knew he was having staged surgery. The patient's attorney said yes.

Dr. Campbell moved to go into Executive Session at 9:00 a.m. for legal advice. Mr. Rhodes seconded the motion. Motion passed 5-0.

The Board reconvened regular session at 9:18 a.m.

After further discussion of the allegations as stated above, the Board had some serious concern over the proper care of this patient.

MOTION: Dr. Campbell moved to offer a Consent Agreement for the four allegations as stated by the Board's investigator, to include a six-month probation to review all rear foot and ankle

surgeries and review of full records and surgical schedule every month. If Dr. Nakra is non-compliant, further disciplinary action may be taken by the Board. If the Consent Agreement is not signed by Dr. Nakra, this case will automatically move to informal interview. The Order shall also include 10 hours of Continuing Medical Education hours on medical record-keeping. Mr. Rhodes seconded the motion.

<u>Vote</u>		Barbara Campbell, D.P.M. President	Joseph Leonetti, D.P.M.	Barry Kaplan, D.P.M.	M. Elizabeth Miles Public Member	John Rhodes Public Member
YES	4	X	X	X		X
NO	0					
ABSTAIN	0					
ABSENT	1				X	

VOTE: Motion passed 4-0

SECOND MOTION: Dr. Kaplan moved to open a complaint for improper or inappropriate billing. Dr. Leonetti seconded the motion.

VOTE: Motion passed 4-0

3. 11-39-M Kevin O'Brien, D.P.M.

This case was continued from the August Board meeting. The allegation is that the doctor performed surgery without seeing preoperative x-rays. The Board reviewed the physical x-rays as they were submitted to the Board upon request. After review, it appeared that Dr. O'Brien may have fallen below the standard of care by not reviewing the x-rays prior to performing surgery.

MOTION: Dr. Leonetti moved to issue a Letter of Concern for poor preoperative management and diagnosis and proper treatment of the injury. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0

4. 12-17-C Mary Maselli, D.P.M.

Dr. Forman, investigator for the Board, presented this case as treatment below the standard of care in that the doctor did not use topical anesthetic prior to a debridement procedure. Patient is insulin dependent diabetic and the doctor had the patient stay off the foot. Wound care was on the right foot only. Dr. Forman felt the wound care was poor and the doctor billed code 11042 when it should have been billed under 99597. Patient had an ulcerated foot but no topical treatment was performed; only antibiotic and pain medications. Fibers and necrotic tissues were debrided. The patient went to the emergency room for wound care as the ulcers had grown. On April 25, 2013 patient was walking on an ulcer which was worsening. Dr. Forman felt not using a topical anesthetic did not fall below the standard of care as it was not required. A vascular consult was done one week later; wound sizes not documented. Chronic ulcers, diabetic neuropathy and tendinitis are common in patients with diabetes so it did not appear to be a violation.

MOTION: Dr. Leonetti moved to dismiss to lack of violation of the Podiatric Practice Act. Dr. Kaplan seconded the motion.

VOTE: Motion passed 4-0.

5. 12-22-C Kevin O'Brien, D.P. M.

Dr. Polakof presented this case as the patient had a painful second hammer toe. Preoperative x-rays were missing. Patient states doctor refused to give IV antibiotics and records. Patient had a shortened second metatarsal which is a very destructive surgery. Allegation of improper treatment of surgical foot is substantiated however the second the allegation of not initiating IV antibiotic is unsubstantiated. Surgeries were April, 2008 and February 2009. The Board reviewed the Order that exists for Dr. O'Brien to determine if the surgery was done during the time that he was restricted from performing surgery; it was determined the Order was not in place at the time.

MOTION: Dr. Leonetti moved to issue a Consent Agreement for practice that falls below the standard of care regarding surgery, to include an Order restricting all bone surgery within the podiatry scope of practice for one year. After one year, Dr. O'Brien must petition the Board for reinstatement of his surgical privileges for surgeries of the bone. Dr. Kaplan seconded the motion.

<u>Vote</u>		Barbara Campbell, D.P.M. President	Joseph Leonetti, D.P.M.	Barry Kaplan, D.P.M.	M. Elizabeth Miles Public Member	John Rhodes Public Member
YES	4	X	X	X		X
NO	0					
ABSTAIN	0					
ABSENT	1				X	

VOTE: Motion passed 4-0.

6. 13-24-C Brian Roth, D.P.M.

Dr. Polakof presented this case as patient underwent surgery for diabetic ulcers. The documentation was good however the patient still lost one toe due to amputation; Dr. Roth was not the doctor who performed the amputation. The patient was given diabetic shoes and braces. Dr. Roth was present to address the Board along with his counsel Mr. Don Alexander. Dr. Roth stated he was very sorry this happened to the patient however he felt his treatment and care of the patient was proper and within the scope of practice. Dr. Polakof stated that she felt the patient's allegation was unsubstantiated as Dr. Roth's procedures appear to be correct and proper.

MOTION: Dr. Campbell moved to dismiss the case due to lack of violation of the Podiatric Practice Act. Dr. Leonetti seconded the motion.

VOTE: Motion passed 4-0

7. 13-28-M Kevin O'Brien, D.P.M.

Dr. Polakof presented this case as there was a malpractice action. The allegation is that the plate placement was not proper and there was improper treatment of the foot during surgery. Dr. Polakof reviewed the records and interviewed Dr. O'Brien, substantiating the allegations of the malpractice claim.

MOTION: Dr. Leonetti moved to issue a Letter of Concern for falling below the standard of care for surgery. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0.

8. 14-04-C Alan Discont, D.P.M.

Dr. Polakof presented the case as no completed documentation was received and the Board needed that to proceed and for the investigation. Records were not produced when requested and what was in the injections was not provided. Dr. Discont's notes listed "general anti-inflammatories" versus what the actual medication was. Allegation of incomplete medical records- patient's complaint did not match the doctor's records. Inaccurate medical records were noted. Patient alleges harm to the public for improper billing, incomplete records and failure to listen to the patient's concerns. Billing charges show level 4 when should be billed level 3. Dr. Polakof had several discussions with the patient regarding the anti-inflammatory injections. Dr. Discont was interviewed by Dr. Polakof. He stated his medical records could use some work. Dr. Discont responded "just the typical" when asked what he injected into the patient. Dr. Campbell noted there was no documentation in the medical record regarding the patient's diagnosis of Epstein Barr. On June 12, 2012, patient saw Dr. Discont for a toe cyst. On December 15, 2012 patient was diagnosed with Epstein-Barr. The patient saw Dr. Discont on July 2013 and no updated medical information was requested.

Dr. Campbell asked Dr. Polakof if she knew Dr. Discont's timeframe for dictating patient records; she did not. There were no records to substantiate new conditions of the patient. Dr. Campbell asked patient if they were currently under the care of another physician. The patient's medical records were released by Dr. Discont after notice of complaint by the Board. Patient was present to address the Board. She gave a summary of her complaint and issues with Dr. Discont as stated at previous Board meetings and that she now has a ruptured plantar and she has a heel spur. She has no balance; her lifestyle has been severely altered by Dr. Discont's injections and subsequent surgery. The patient feels that Dr. Discont has broken many statutes. Dr. Leonetti asked the patient about how many injections she received; patient stated five in a two-month period. The patient wore a dial-boot which caused more pain. The patient showed the Board that brace she wore and also the shoe inserts. Mr. Rhodes asked the professional members about steroid use and whether the number of injections was proper for this patient.

MOTION: Dr. Campbell moved to issue a Consent Agreement with probation for six months for unprofessional conduct pursuant to A.R.S. §32.854.01(11)(17)(20)(25) to include ten (10) hours of Continuing Medication Education with six (6) hours of billing and coding and four (4) hours of recordkeeping with courses preapproved by the Board; and a random chart review of 10. If the doctor does not sign the Consent Agreement, the complaint automatically moves to Informal Interview. Dr. Kaplan seconded the motion.

<u>Vote</u>		Barbara Campbell, D.P.M. President	Joseph Leonetti, D.P.M.	Barry Kaplan, D.P.M.	M. Elizabeth Miles Public Member	John Rhodes Public Member
YES	4	X	X	X		X
NO	0					
ABSTAIN	0					
ABSENT	1				X	

VOTE: Motion passed 4-0.

Prior to discussion of this case, Dr. Kaplan disclosed that he and Dr. Shulman are employed by the same employer however; Dr. Kaplan does not worked directly with or for Dr. Shulman.

Dr. Polakof presented the case as patient is a nurse who presented with foot pain. Dr. Shulman found a bunion and discussed surgery on July 9, 2012. The patient's scheduled surgery was bumped for another surgery and the patient states that Dr. Shulman asked her to change the other surgery scheduled so that the August 31, 2012 surgery can be performed. On September 13, 2012, the patient had reduced swelling of the foot with excessive pain. Both patient and emergency room attempted to contact Dr. Shulman with no response. Patient called the office to schedule emergency appointment and was told by staff she should just come at her regularly scheduled postoperative appointment. There were three allegations submitted; allegation numbers one and two were not substantiated, allegation three of emergency care not responded to by Dr. Shulman was substantiated. Dr. Zavari diagnosed RSD and sent the patient to Dr. Shulman. Dr. Leonetti asked what the fixation was. Records indicated the wrap was dry and secure when in fact it was wet. The patient was present to address the Board stating that she presented with bunion and to straighten her big toe. The doctor called the patient to have her reschedule the surgery for earlier. When the patient was running late, the surgery center made excessive calls to patient as Dr. Schulman was waiting. After surgery, patient woke up in severe pain with no splint; wound was weeping near the sutures and the foot was red and swollen; the foot eventually burst open at the incision from the swelling and her foot was infected. The patient stated the doctor did not provide any postoperative care at all. The patient was visibly upset and stated she lost her job, her car, her health insurance and lives on Social Security disability now. Patient states the doctor only accepts cash. Dr. Campbell asked if the patient was given a bone stimulator; she was. Dr. Leonetti asked Dr. Shulman if he did a culture of the foot-he did not. Patient saw pain management specialist. Dr. Campbell asked the patient if Dr. Shulman came to see her post-op which he did not. There is a discrepancy as to the total number of implants placed in the big toe. Dr. Leonetti asked the last x-ray was-patient stated two years ago. Dr. Leonetti asked which doctor diagnosed that the nerve was cut. The patient stated she didn't know. Dr. Campbell asked what immobilization was used. The patient did air boot for one year. Dr. Shulman was present to address the Board. He said the procedure was technically good and went well and there were no infections. He saw the patient at six weeks and there was no sign of infection or complication that time. Dr. Schulman rebutted the character assassinations made by the patient. Dr. Kaplan asked if Dr. Schulman was irate in the operating room. He stated he's never been irate and if he was there were be a report by the hospital. Dr. Leonetti asked if this was a typical post-op for Dr. Shulman-he stated it was not. Dr. Leonetti asked Dr. Shulman if he's ever seen an allergic reaction to implants; he stated no. The postoperative x-rays looked good-bone was healing, hallux was straight. The Board questioned whether Dr. Shulman missed the RSD? Dr. Leonetti stated that that he didn't think he would have done anything different in this case. Dr. Campbell asked about the conservative care- there was none. Dr. Leonetti couldn't directly correlate what Dr. Shulman did to the RSD. The patient came back before the Board stating that she's seen other bunionectomy procedures and none of them had incisions as long as hers. Dr. Leonetti told her the incision was normal in this case. As it did not appear that the RSD was directly related to the surgery or postoperative care, there was no violation of statutes or rules.

MOTION: Dr. Kaplan moved to dismiss the case due to lack of violation of the Podiatric Practice Act. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0.

10. 14-16-C Daniel Saunders, D.P.M.

Dr. Polakof summarized the case as patient had pain in ball of foot and that Dr. Saunders gave an injection which worsened the condition, requiring surgical repair. The doctor's response states conservative treatment was discussed however the patient never returned after the injection. There was no substance to Dr. Saunders' notes enough for someone to pick up the care of the patient and no mention of the medications injected, the site or amount injected. The notes were short and too nondescript. It is questionable as to who signed informed consent as there were two different handwritings on the form. Records were not provided to the Board within 20 days and were incomplete.

MOTION: Dr. Leonetti moved to issue a Letter of Concern for improper record-keeping and failure to forward medical records and timely manner including a non-disciplinary order for ten (10) hours of Board approved CME in record-keeping, to be completed within six months. The 10 hours of CME are in addition to CME required for renewal. Dr. Kaplan seconded the motion.

VOTE: Motion passed 4-0.

11. 14-21-C Kris DiNucci, D.P.M

Dr. Polakof presented this case as patient had a fracture of the base of the toe. Dr. DiNucci suggested bunion surgery and removed hardware as he thought it was impeding the surgery site. Patient alleges he still has problems and walks on the side of the foot. Allegation number one-treatment of second metatarsal was questionable. Allegation number two is improper surgery of the Varus; rotation and butting of metatarsal; and why this was not addressed inter-operatively. Dr. Kaplan asked on March 20, 2014 hallux Varus was noted, why wait two weeks to address it? The preoperative x-ray shows major bunion- not mild. Dr. Polakof spoke to Dr. DiNucci who said the patient knew the risks going into the surgery. As the Board had some questions for Dr. DiNucci who was not present to address the Board, the complaint was tabled to the next meeting in order to invite Dr. DiNucci to appear to answer questions.

12. 14-32-C Kelvin Crezee, D.P.M.

Dr. Forman presented the case as an allegation of misdiagnosis. An x-ray and physical therapy was recommended. The patient followed up with Dr. Crezee when the patient had less pain and was told to continue with the current plan, including anti-inflammatories. A Cam Walker was given to the patient. Dr. Forman did not see misdiagnoses as Dr. Crezee had the patient non-weight bearing. An ultrasound was performed. Dr. Leonetti asked if the Board thought three diagnostic ultrasounds were excessive. On the last one, Dr. Crezee saw a condition not on the previous ultrasounds. Dr. Leonetti felt that a review of x-rays is pertinent to pathology but maybe not ultrasounds. Dr. Leonetti asked to table this complainant and directed staff to get x-rays for final determination of the issue in this complaint.

13. 15-01-C Lee Richer, D.P.M.

Dr. Polakof presented the case as patient ordered orthotics. Dr. Richer casted the patient on three separate occasions and could not get a good fit. Dr. Richer made several attempts to fix the situation, even at his own expense. The patient was present to address the Board but left before

doing so. Dr. Polakof stated allegations were unsubstantiated as Dr. Richer tried to remedy the situation to no avail.

MOTION: Dr. Leonetti moved to dismiss the complaint due to lack of violation of the podiatric practice act. Dr. Kaplan seconded the motion.

VOTE: Motion passed 4-0.

F. REVIEW, DISCUSSION AND POSSIBLE ACTION ON RENEWAL OF LICENSE TO PRACTICE:

Licensee	Dispensing	Licensee	Dispensing
Bates, David	Yes	Mendicino, Robert	No
Brower, Randall	Yes	Nazarian, Serjik	Yes
Brown, J David	Yes	Olsen, Ron	Yes
Farkas, Michael	No	Schade, Valerie	No
Hansen, Myron	Yes	West, Holly	Yes
Jones, Jacob	Yes	Wood, Ryan	No
King, Jonathan	No		

MOTION: Dr. Leonetti moved to approve the license renewals as submitted above. Dr. Campbell seconded the motion.

VOTE: Motion passed 4-0.

G. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF BOARD MEETING MINUTES:

14. June 10, 2015 5th Executive Session Minutes

MOTION: Dr. Campbell moved to approve item 14 has written. Dr. Leonetti seconded the motion.

VOTE: Motion passed 4-0.

15. July 22, 2015 Regular Session Minutes

MOTION: Dr. Kaplan moved to approve item 15 has written. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0.

16. July 22, 2015 Executive Session Minutes

MOTION: Dr. Kaplan moved to approve item 16 has written. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0.

17. July 22, 2015 2nd Executive Session Minutes

18. July 22, 2015 3rd Executive Session Minutes

19. July 22, 2015 4th Executive Session Minutes
20. July 22, 2015 5th Executive Session Minutes
21. July 22, 2015 6th Executive Session Minutes
22. July 22, 2015 7th Executive Session Minutes
23. July 22, 2015 8th Executive Session Minutes

MOTION: Dr. Campbell moved to approve items 17-23 has written. Mr. Rhodes seconded the motion.

VOTE: Motion passed 40

H. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF CONTINUING EDUCATION:

24. Department of Veterans Affairs-“Weekly Seminar in Current Concepts Podiatric Medicine and Surgery”: 43 CME hours

MOTION: Dr. Leonetti moved to approve item 24 as submitted. Dr. Kaplan seconded the motion.

VOTE: Motion passed 4-0.

25. Arizona Podiatric Medical Association-“Advanced Wound Care and Skin Grafting”: 2 CME hours

MOTION: Dr. Kaplan moved to approve item 25 as submitted. Mr. Rhodes seconded the motion.

VOTE: Motion passed 4-0.

I. EXECUTIVE DIRECTOR’S REPORT:

26. Budget
27. Board Office Administrative/Complaint Status Update
28. Future Agenda Items

Ms. Whelan reported that the beginning cash balance as of September 1 was \$181,187 with an ending cash balance of \$178,094. Since the last meeting there has been 52 phone calls received and returned, 124 e-mails received, and the interim Board staff has purged various files pursuant to the Agency’s record retention schedule in order to comply with state statute regarding Agency records.

J. CALL TO PUBLIC:

Dr. Campbell made call to the public at 2:05 p.m. No one was present to address the Board.

K. NEXT BOARD MEETING DATE:

29. October 14, 2015 at 8:30 a.m.

The Board confirmed its next meeting date is October 14, 2015 at 8:30 a.m.

L. MOTION TO ADJOURN:

Dr. Campbell moved to adjourn the meeting at 2:06 pm. Mr. Rhodes seconded the motion. Motion passed 4-0.