



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

***Regular Session Minutes***

**October 14, 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  
M. Elizabeth Miles, Public Member  
  
\* Absent

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

Assistant Attorney General: Frankie Shinn-Eckberg

**A. CALL TO ORDER**

Dr. Campbell called the meeting to order at 8:48 a.m.

**B. ROLL CALL**

All Board members, with the exception of Joseph Leonetti, D.P.M. were present, including acting staff Margaret Whelan and Dee Doyle and Assistant Attorney General, Frankie Shinn-Eckberg.

**C. PRESIDENT'S REPORT**

Dr. Campbell reported that she received an e-mail from former staff requesting their name be removed from the Board's website and other documents relating to the Board. Acting Staff indicated that changes had already been completed. Dr. Campbell reported that John Rhodes received an e-mail from the Arizona Governor's Office of Boards and Commissions requesting him to complete a survey. Ms. Shinn-Eckberg explained that all Board members will be receiving the same survey and that Board members should take time to complete and return it to the Governor's office.

#### **D. REVIEW, DISCUSSION AND VOTE ON INVESTIGATIVE REVIEWS/COMPLAINTS:**

1. 11-38-C Alex Bui, D.P.M.

Dr. Jerome Cohn, investigator for the Board, presented this complaint as one that was initiated by Dr. Patricia Kirk, who was a licensed podiatrist in Arizona, but now in practices in Tennessee. On April 13, 2011, Dr. Kirk signed a contract with Mobile Docs and quit one week later and that there were six patients seen and billed by Dr. Bui under Dr. Kirk's name after her departure. Dr. Bui said patients were not his, he did not see them and did not bill; there were no medical records for patients in question. Dr. Cohn spoke to Dr. Kirk who stated she returned all payments to Blue Cross Blue Shield ("BCBS"). Dr. Cohn contacted Dr. Bui to request medical records with the timestamp, however, no records existed. The patients were allegedly seen while Dr. Bui was on suspension. Dr. Cohn called BCBS who stated funds were returned so no further investigation was conducted and that Dr. Bui was not a contracted provider of BCBS. Dr. Cohn was unable to substantiate allegations patients being seen and billed under Dr. Kirk as no records existed to show proof of Dr. Bui seeing any patients. Dr. Cohn was unable to get patient names in order to speak to them. Dr. Kaplan asked to see the signed forms for BCBS; no records. Ms. Miles stated she would like to see the BCBS records subpoenaed.

The Board directed staff to subpoena records including billing and claim forms from BCBS.

2. 13-02-C Robert Evans, D.P.M.

Dr. Cohn presented this case as a poor postoperative result with continued pain from bilateral foot surgery. The patient states that he was told there be no more pain if he had surgery. Dr. Cohn tried to contact Dr. Evans with no success. Patient made over eight (8) requests for medical records but never received them. X-rays were negative for fracture; diagnostic ultrasound performed; patient had 24 cortisone injections of Kenalog in each joint from 2007 to 2011. No other treatment was performed or recommended. Consent agreement was signed but did not include diagram of the plan. There was a concern with the operative report as no plan shown for treatment or procedure. There was a postoperative infection which was treated with antibiotics. A postoperative toe fracture not relevant to these postoperative issues occurred. Dr. Evans attempted to fuse PIPJ; no repairs were done or done properly. X-rays from 2013 were reviewed-shows subluxation of the joint in left foot. There were issues with charges; codes 99213 or 99214 used for every chart Dr. Cohn reviewed. Code 64450 was used for every chart; procedure was not performed. Dr. Evans did a steroid injection; should be coded 20600. Dr. Evans billed code 28308 for osteotomy-none performed. Code 28072 was used and not performed. Code 28285 was used; appropriated. Code 11040 was billed twice but no mention of procedure to bill. Dr. Cohn interviewed the patient to ask if Dr. Evans went over the risks of steroid injections; patient stated no and that he was told the insurance would not cover the injections in both feet on the same day which is why she came in on separate days for injections of 1 foot or the other. Dr. Cohn reviewed records from other treating physicians and was unable to determine if the medical records requested were given timely. Dr. Cohn was unable to substantiate Dr. Evans comments regarding "no pain with surgery". The surgical procedures provided to not provide adequate remedy and there was no attempt by Dr. Evans to try other treatments or refer out to another physician. The standard of care was not met and/or billing issues of "no same day injections" in wrong. Patient was present to address the Board stating that her feet are now deformed and she has constant pain. She can't wear shoes and has pain at night. Dr. Kaplan asked the patient if she ever asked Dr. Evans why she was getting so many injections; patient stated yes. Dr. Evans was present to address the Board stating the records were missing or lent

out another physician. Dr. Kaplan asked Dr. Evans about the number of injections Dr. Evans stated the feet were arthritic and the patient didn't want surgery; he tried to treat the pain and make the patient comfortable. Dr. Kaplan asked if Dr. Evans ever thought the injections were causing the problem. Dr. Evans did not feel the injections were causing or affecting the patient's problem regarding the tissues, tendons, etc. Dr. Kaplan questioned when Dr. Evans used Ultrasound and why he started using it. Dr. Kaplan asked again about billing codes and use for procedure. Mr. Rhodes asked about Kenalog and was it per site or per dose as proper use. Dr. Kaplan asked Dr. Evans what the patient consented to because looking at the records, it appeared as there was "extra billing" compared to the actual procedure performed. Dr. Evans billed for two osteotomies; Dr. Evans doesn't remember performing two. There was no code for hemi-implant arthroplasty. Dr. Kaplan states no osteotomy was performed and asked Dr. Evans if he knew what the contraindications for steroid use was.

Dr. Campbell moved to go into executive session for legal advice at 9:48 a.m. Dr. Kaplan seconded the motion.

The Board went into executive session at 9:48 a.m.  
The Board reconvened regular session at 9:53 a.m.

Ms. Miles stated this is a case for potential disciplinary action due to multiple violations and asked the Board if they wanted to offer a consent agreement versus moving informal interview. Ms. Miles stated she was considering the decree of censure with three years of probation to include CME in billing and coding, record-keeping, surgical procedures and chart review. The Board did not want to offer a consent agreement this time.

**MOTION:** Ms. Miles moved to go to informal interview for possible violation of A.R.S. §32-852(6) and A.R.S. §32-854.01(9)(11)(20)(24)(25). Dr. Kaplan seconded the motion.

**VOTE:** Motion passed 5-0.

3. 13-32-C Brad Hayman, D.P.M.

Dr. Polakof, investigator for the Board, presented this case as the patient's daughter overheard a conversation between office staff and the patient being charged for topical antifungal and that the doctor and his staff are taking advantage of her mother. The patient's daughter felt the diabetic shoes her mother needs should be covered for free. Dr. Polakof checked on the cost of antifungal and finds the charge given by Dr. Hayman's office well within the range of cost for the industry.

**MOTION:** Ms. Miles moved to dismiss the case due to lack of violation of the podiatric practice act. Mr. Rhodes seconded the motion.

**VOTE:** Motion passed 5-0.

4. 14-21-C Kris DiNucci, D.P.M.  
5. 14-28-C Michael Dershowitz, D.P.M.  
6. 14-32-C Kelvin Crezee, D.P.M.

Items 4-6 were tabled, without discussion, to the December Board meeting at the request of the doctors' counsel, Mr. Bruce Crawford.

**E. REVIEW, DISCUSSION, UPDATE AND POSSIBLE ACTION ON EXISTING DISCIPLINARY MATTERS/PROBATION:**

- 7. 14-09-B Janna Kroleski, D.P.M.

Dr. Campbell advised the Board that she has seen the latest report submitted by Dr. Kroleski’s treating physician and that she is in compliance and doing well; most recent urine screen was negative. The next quarterly review will be in January 2016.

**F. REVIEW, DISCUSSION AND POSSIBLE ACTION ON ADMINISTRATIVE MATTERS; LICENSE APPLICATIONS:**

- 8. Trevor Black, D.P.M.
- 9. Nathan Plaskey, D.P.M.
- 10. Steven Tager, D.P.M.
- 11. Steven Gillespie, D.P.M.
- 12. Eric Espensen, D.P.M. -Comity application

**MOTION:** Dr. Campbell moved to approve applications for licensure for the applicants listed in items 8-12 contingent upon successful passing of the licensing exam in December. Ms. Miles seconded the motion.

**VOTE:** Motion passed 5-0.

**G. REVIEW, DISCUSSION AND POSSIBLE ACTION ON REQUEST FOR LATE RENEWAL:**

- 13. Jesse Olson, D.P.M.

Dr. Olson and requested to appear before the Board regarding his late renewal as there were extenuating circumstances due to illness, and that he also did not receive a renewal notice from the Board. Even though the doctor was ill, there is no provision in the law for extending or waiving the time frames for renewal. Ms. Miles told Dr. Olson that while she is sympathetic to his situation, the Board is prohibited from extending or excepting the renewal application time frame and that the doctor must reapply pursuant to A.R.S. 32-829(A).

**MOTION:** Ms. Miles moved to cancel license as it was not renewed. Dr. Campbell 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	5	X	X	X	X	X
NO	0					
ABSTAIN	0					
ABSENT	0					

**VOTE:** Motion passed 5-0.

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

14. Arizona Institute of Foot care Physicians, CME credits for attending Cardiovascular Disease Management, A Case-Based Approach, Oct. 1-2, 2015 - 13.5 hours.

Ms. Miles had some issue/concern about accepting all of the hours submitted when they may not apply and also to accept a course that has already occurred.

Ms. Miles moved to go into executive session for legal advice at 10:48 a.m. Dr. Campbell seconded the motion.

The Board went into executive session and 10:48 a.m.  
The Board reconvened regular session at 10:49 a.m.

**MOTION:** Ms. Miles moved to approve 10 hours of CME for this course submitted.  
Dr. Campbell seconded the motion asking Dr. Kaplan to advise the vendor of which hours are accepted.

**VOTE:** Motion passed 5-0.

## **I. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF BOARD MEETING MINUTES:**

15. July 22, 2015 Regular Session Minutes

Dr. Campbell stated there were two minor amendments to the draft minutes prior to finalizing.

**MOTION:** Ms. Miles moved to approve the minutes as amended. Dr. Campbell seconded the motion.

**VOTE:** Motion passed 5-0.

16. July 22, 2015 Executive Session Minutes
17. August 12, 2015 Regular Session Minutes
18. August 24, 2015 Special Meeting Minutes
19. August 24, 2015 Executive Session Minutes
20. September 9, 2015 Regular Session Minutes

Items 16-20 were tabled with no discussion. They will be approved at an upcoming meeting.

## **J. EXECUTIVE DIRECTOR'S REPORT:**

21. Budget
22. Board Office Administrative/Complaint Status Update
23. Executive Director search update
24. Future Agenda Items

Ms. Whelan reported that as of September 30, 2015 the beginning cash balance was \$182,348 with an ending cash balance of \$181,227. The acting Board staff has responded to at least 54 phone calls, 175 e-mails and opened nine complaints. Ms. Whelan reported that the executive director position has been posted and that the interview process would be close to the end of October. Future agenda items requested were discussion of the investigative process and how the Board handles initial complaint review at the Board meeting; it is the Board's intent to expedite and streamline the investigative process.

**K. CALL TO PUBLIC:**

Dr. Campbell made a call to the public at 11:17 a.m. No one was present to address the Board.

**L. NEXT BOARD MEETING DATE:**

1. Tuesday, November 10, 2015 at 8:30 a.m.

The Board confirmed its next meeting date of November 10, 2015 and noted the change in day of the week to Tuesday due to the Veterans Day holiday.

**M. MOTION TO ADJOURN:**

Dr. Campbell moved to adjourn the meeting at 11:18 a.m. Mr. Rhodes seconded the motion. Meeting was adjourned at 11:18 a.m.