



Janice K. Brewer,
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, Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

April 8, 2009, 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

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

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

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

II. Roll Call

Dr. Leonetti called the roll. All Board members were present.

III. Approval of Minutes

a. March 11, 2009 Regular Session Minutes.

MOTION: Dr. Kaplan moved to approve the minutes as written. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. March 11, 2009 Executive Session Minutes.

MOTION: Dr. Kaplan moved to approve the minutes as written. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

IV. Review, Discussion and Possible Action –Review of Complaints

a. 06-22-M – Andrew Lowy: Malpractice action alleging improper performance of surgical procedure, and failure to diagnose and treat post-operative infection.

Dr. Polakof served as the Physician investigator for this case and is recused from the adjudication process. Dr. Lowy was not present. Dr. Polakof summarized the complaint information which is based on a malpractice action filed by the patient alleging that Dr. Lowy improperly performed surgery on her right foot and failed to properly diagnose and treat a post-operative infection. Dr. Polakof explained the surgical procedures Dr. Lowy performed and his overall care of the patient. She also explained that the patient had admitted to Dr. Lowy that her foot had been stepped on by a horse in the post-operative period. With regard to the post-operative infection, Dr. Polakof

explained that Dr. Lowy did identify an infection approximately six weeks post-op, but then the patient went to another doctor for services and Dr. Lowy was not able to provide any further treatment in that regard. Dr. Polakof stated her investigative findings that both allegations in this matter are unsubstantiated.

MOTION: Dr. Leonetti moved to dismiss this matter finding no violations of statute or rule. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

- b. 08-34-M – Stanton Cohen: Malpractice action alleging improper performance of surgical procedure and failure to obtain informed consent.

Dr. Kaplan served as the Physician investigator for this case and is recused from the adjudication process. Dr. Cohen was not present. Dr. Kaplan summarized the complaint information in this case which is based on a malpractice action filed by the patient alleging that Dr. Cohen improperly performed surgery on her foot and failed to obtain consent from the patient for the procedure he performed. Dr. Kaplan explained first that he did find in the patient's chart a signed consent form which pertained to the procedure Dr. Cohen performed. Dr. Leonetti asked why there would be an allegation of no consent when there was clearly a consent form in the chart. Ms. Penttinen explained that the allegations stated in the investigation report were based on the information contained in the civil complaint. With regard to the actual procedure, Dr. Kaplan stated that he felt the procedure was done appropriately

MOTION: Dr. Leonetti moved to dismiss this matter finding no violation of statute or rule. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

- c. 08-42-C – Michael Sekosky: Failure to refund overpayment.

Dr. Kaplan served as the Physician investigator for this case and is recused from the adjudication process. Dr. Sekosky was not present. Dr. Kaplan summarized the complaint information in this case. The complainant said she paid Dr. Sekosky for custom orthotics and the doctor's office also billed her insurance company; she overpaid Dr. Sekosky by \$87.49 but was not refunded that amount. Dr. Sekosky's response indicated that the patient had used a nickname instead of her legal first name so there was a delay confirming her insurance coverage. Once the confusion with her insurance coverage was confirmed the complainant was refunded the total amount that she overpaid. Dr. Leonetti asked if the complainant had confirmed that. Ms. Penttinen confirmed that she did speak with the complainant who confirmed she did receive a refund shortly after she had filed her complaint. Dr. Kaplan stated his investigative finding that the allegation of failing to refund an overpayment is not substantiated.

MOTION: Ms. Reagan moved to dismiss this matter finding no violations of statute or rule. Dr. Leonetti seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote with Dr. Kaplan recused.

- d. 08-45-C – Travis Reber: Practice below the standard of care.

Dr. Kaplan served as the Physician investigator for this case and is recused from the adjudication process. Dr. Reber was not present. Dr. Kaplan summarized the complaint information in this case which alleges that Dr. Reber practiced below the standard of care. The complainant saw Dr. Reber one time for foot pain which he said was caused by Pes Planus Valgus deformity which he said he was diagnosed with in 2004. He requested Dr. Reber to provide him with a recommendation for

light duty at work or a determination of disability. However, Dr. Reber did not do so but rather recommended conservative measures and possible surgery. Dr. Kaplan reviewed Dr. Reber's records for the complainant and his response to the allegation which included Dr. Reber's diagnosis that the patient did not have the deformity he claimed to have. Dr. Reber did not feel comfortable recommending light duty or disability after only seeing the complainant one time and because the complainant was unwilling to try the conservative measures he recommended. Dr. Kaplan said that the complainant submitted supplemental documentation to show that he has been found to be one hundred percent disabled as determined by the Social Security Administration. Dr. Leonetti offered that there is no statute or law that requires a doctor to state whether or not a patient is disabled.

MOTION: Dr. Leonetti moved to dismiss this matter finding no violations of statute or rule. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

e. 09-03-C – Don Shumway: Charging or collecting an excessive fee.

Dr. Kaplan served as the Physician investigator for this case and is recused from the adjudication process. Dr. Shumway was not present. Dr. Kaplan summarized the complaint information in this case. The complainant saw Dr. Shumway once and was given a prescription for Powerstep insoles which she purchased from Dr. Shumway's office and was charged \$40.00. Later the complainant found shoe inserts in a local drug store which only cost \$10.00 and appeared to be the same as the ones she purchased from Dr. Shumway. Dr. Kaplan pointed out that Powerstep products are not available in retail businesses; they are by prescription only. He researched Powerstep's prices on the Internet and found that the discounted price that a physician would pay ranged by model from approximately from \$25.00 to \$35.00. Dr. Kaplan stated his investigative finding that a charge of \$40.00 for this type and brand of product was not excessive.

MOTION: Ms. Reagan moved to dismiss this matter finding no violations of statute or rule. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote with Dr. Kaplan recused.

f. 09-04-C – Larry Zonis: Charging or collecting an excessive fee.

Dr. Polakof served as the Physician investigator for this case and is recused from the adjudication process. Dr. Zonis was not present. Dr. Polakof summarized the complaint information in this case. The complainant purchased custom orthotics for his son and paid cash on the date they were picked up from Dr. Zonis' office. After that he received a bill for the full cost of the orthotics. Dr. Polakof reviewed Dr. Zonis' explanation that there had been a glitch in the billing system in his office but the complainant's payment had been located and the account was updated. The patient confirmed that this was true. Dr. Polakof stated her investigative finding that the allegation of charging or collecting an excessive fee was not substantiated. Ms. Reagan asked questions about how many times this sort of problem has happened because the complainant indicated it had happened twice. Ms. Penttinen clarified for the Board members that the complainant did state this had happened once before; however, his complaint only includes the most-recent occurrence.

MOTION: Dr. Leonetti moved to dismiss this matter finding no violations of statute or rule. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote with Dr. Polakof recused.

g. 09-05-C – Jeffrey Copoloff: Performing and charging for unnecessary x-rays, and using an unlicensed x-ray technician.

Dr. Polakof served as the Physician investigator for this case and is recused from the adjudication process. Dr. Copoloff was not present. Dr. Polakof summarized the complaint information and the investigative findings that both allegations in this matter are substantiated: the x-ray taken on patient A.K. was not necessary, and Dr. Copoloff used an unlicensed person to perform that x-ray. Dr. Leonetti asked questions regarding whether the patient saw the doctor before the x-ray was taken. Dr. Polakof explained that Dr. Copoloff's medical assistant, Robyn Clemmer, took the x-ray before the patient saw the doctor and told the patient that this is a regular practice. Dr. Polakof advised the Board that she attempted to speak with Ms. Clemmer by phone but Ms. Clemmer quickly turned the call over to Dr. Copoloff.

As Dr. Kaplan discussed with Dr. Polakof the need for any x-rays given the reason the patient was referred, Dr. Polakof explained that the x-ray was unreadable and of no diagnostic value. The Board members reviewed the x-rays and agreed that they were very dark and of little diagnostic value. Dr. Polakof opined that if the x-ray had been necessary, it should have been repeated due to the poor quality of the first one. Dr. Leonetti expressed concern regarding the allegations as stated in the investigation report as well as the x-ray quality and the x-ray being performed without an order.

MOTION: Dr. Leonetti moved to refer this matter to an Informal Hearing. Ms. Reagan seconded the motion. During discussion the Board members directed staff to issue a subpoena to appear for the Informal Hearing to Dr. Copoloff, to the patient, and to Ms. Clemmer.

VOTE: The motion passed unanimously by voice vote with Dr. Polakof recused.

V. Status Updates: No Board Action – Information Only

a. 07-28-C – Kent Peterson: Monthly status update.

Ms. Penttinen advised the Board that an update had been requested on April 6, 2009 but no response had yet been received.

VI. Review, Discussion and Possible Action

a. 07-32-C – Serjik Nazarian: Comprehensive probation review and discussion on request to terminate probation.

Dr. Nazarian was present with his attorney Mark Gove. Dr. Kaplan reviewed for the Board the records he received from Dr. Nazarian for the surgery he performed in February which now include the inter-operative x-rays. Dr. Kaplan said the records look good overall, although he had a question about the antibiotic and pain medication that the patient was on because those prescriptions were not documented in the patient's chart. Dr. Leonetti asked questions which Dr. Nazarian answered regarding the proper way to chart prescriptions given to the patient, whether it should be in the office chart, the hospital chart, or both. Dr. Nazarian provided the Board members with a copy of a CME certificate which he stated included practice management issues and ethics. Dr. Leonetti stated that Dr. Nazarian has now satisfied the CME requirements and review of records requirements.

MOTION: Dr. Leonetti moved to lift the probation in effect in this matter. Dr. Polakof seconded the motion.

VOTE: The motion passed unanimously by voice vote.

b. 08-18-C – David Laurino: Status of Consent Agreement.

Dr. Laurino was not present. Ms. Penttinen provided the Board with the Consent Agreement which has been signed by Dr. Laurino. The Board members reviewed the document for form and accuracy of information. There was discussion among the Board members regarding providing notification of this action to the insurance carriers with whom Dr. Laurino is contracted. Dr. Leonetti

will contact Ms. Penttinen and provide direction on drafting such correspondence and to which entities it should be sent.

MOTION: Dr. Leonetti moved to accept the Consent Agreement as written. Ms. Reagan seconded the motion. There was brief discussion at which time Ms. Reagan inquired about the number of surgeries Dr. Laurino performs each month and therefore how many records he will be submitting to the Board for review. Dr. Leonetti advised that that information is unknown.

VOTE: The motion passed unanimously by voice vote.

VII. Probation / Disciplinary Action Status Reports: No Action – Information Only

a. 06-04-C – Alan Gaveck: Monthly report update.

Dr. Gaveck was not present. Dr. Leonetti reviewed correspondence received from Dr. Gaveck's attorney indicating that the doctor did not perform any surgeries during the month of March. No action is taken at this time. Ms. Verstegen informed the Board that Dr. Laurino's appeal of this action is set for oral argument in the near future.

b. 08-03-C – Elaine Shapiro: Monthly report update.

Dr. Shapiro was not present. Ms. Penttinen advised the Board that she has not received any reports of non-compliance from Dr. Sucher. The next regular progress report is due in June.

VIII. Review, Discussion and Possible Action on Administrative Matters

a. Jason Anderson, DPM: Request to waive CME requirements.

Dr. Anderson was not present. Ms. Penttinen reviewed with the Board members her email correspondence with Dr. Anderson in which Dr. Anderson requested to waive the CME requirements for his renewal application because he is currently completing a Fellowship in Tucson, Arizona. Ms. Penttinen had advised Dr. Anderson of the three reasons why a waiver could be requested / approved. Dr. Leonetti, Dr. Kaplan and Dr. Polakof discussed that there are plenty of opportunities to attend and complete CME's while in a Fellowship program, and stated that the program itself would not count as CME.

MOTION: Dr. Leonetti moved to deny Dr. Anderson's request to waive the CME requirements. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. APMA request for approval of CME credit for Annual Scientific Meeting.

MOTION: Dr. Leonetti moved to approve the APMA conference for CME. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

c. New format for initial license applications and instructions.

d. New format for license renewal applications.

Agenda items VIII(c) and (d) were discussed simultaneously. Ms. Penttinen explained that she reformatted the initial and renewal application forms to improve some confusing language and adhere more closely to information which is required to be captured on those forms according to the

Board's statutes and rules. The Board members discussed the application question regarding having privileges to practice at any healthcare institution restricted, sanctioned, suspended or revoked or denied; the Board also wants to include whether the applicant/licensee has been investigated in this regard. For the new renewal application form, the Board members preferred one of the proposed new documentation forms for CME. The instructions for new applications which were presented to the Board are considered acceptable; instructions for the renewal application need to be developed.

Ms. Reagan discussed the costs of printing and sending out the renewal forms and asked about the possibility of having renewals done completely online in a paperless system. The Board members discussed the number of sheets of paper that are sent in each renewal packet, postage costs, and the costs associated with developing a paperless system. Ms. Penttinen offered that in future years the Board may consider having the renewal forms on the Board's website and sending a one-page reminder to all licensee's to renew their license, and dispensing registration if needed, with instructions to download the forms from the website and send in to the Board. This option would save some postage costs and largely reduce paper costs. The Board concluded that for this year the renewal forms will be sent as they have been in the past and there may be future consideration of changing or improving the renewal process. Ms. Verstegen informed the Board that her office has advised all health care regulatory boards to require citizenship or right-to-work documentation on all renewals (as well as on the initial application). The Board members agreed that such documentation will be required on all podiatry license renewals.

- e. New License Applicants
 - i. Michael Brewer
 - ii. Alan Carlson
 - iii. Anthony Cole
 - iv. Carolyn Cole
 - v. Ryan Fitzgerald
 - vi. Daniel Fulmer
 - vii. Gail Johnson
 - viii. Paul Ledesma

The Board members reviewed all new license application files. Following that review they found that the applications for Anthony Cole, Ryan Fitzgerald, and Paul Ledesma were complete. The applications for Michael Brewer and Carolyn Cole were complete except for their PMLexis scores. The application for Alan Carlson is incomplete due to missing scores for the National Boards Part I & II. And the applications for Daniel Fulmer and Gail Johnson are incomplete pending the receipt of license verification for each of them from the State of Hawaii.

MOTION: Dr. Leonetti moved to accept and approve the applications for Drs. Anthony Cole, Ryan Fitzgerald and Paul Ledesma. Dr. Kaplan seconded the motion. During discussion, the Board members directed staff to notify the remaining applicants of their outstanding deficiencies. Drs. Michael Brewer and Carolyn Cole will be advised that they can sit for the Arizona oral examination but will not be permitted to obtain their license until the PMLexis scores are received. Drs. Daniel Fulmer and Gail Johnson will not be permitted to sit for the oral exam unless their license verifications from Hawaii are received. Dr. Alan Carlson will not be permitted to sit for the oral exam unless his National Boards Part I & II scores are received.

VOTE: The motion passed unanimously by voice vote.

IX. Executive Director's Report

- a. Submission of first progress report to the Auditor General's office.

Ms. Penttinen advised that she sent the progress report to the Auditor General's office on March 19, 2009 and she has not yet received any response.

b. Open complaint status report.

Ms. Penttinen reviewed with the Board the complaint status report which is generated from the database to show all currently open complaints. Since this report was copied for the Board members, this report has been modified to sort the data by complaint number rather than by the complainant's name. The Board members expressed their satisfaction with this report and it will be provided to the Board at each meeting for informational purposes only; the cases listed on that report will not be discussed during the Board meetings unless they appear on the agenda. Ms. Penttinen advised that there are currently 33 open complaints including those that were considered during today's meeting; 14 of those cases are older than the Board's new goal of 180 days. Also, some open cases have been completed but they were not on today's agenda due to there being too short of a time period to notify the licensee of the Board's pending review of their case(s). Dr. Leonetti asked if a complainant name of "PICA" meant that the case was a malpractice action reported directly from PICA, which Ms. Penttinen confirmed was accurate.

c. New information technology support contractor.

Ms. Penttinen informed the Board members that she had entered into an interagency service agreement with the AZ School Facilities Board for services to be provided by their staff member John Penzcar. So far Mr. Penzcar has corrected or updated several areas of the database which had not been functioning properly. Particularly, in the past, disciplinary actions for expired licensees could not be viewed on the Board's website; that has now been fixed so that all actions can be viewed online regardless of the license status.

X. Call To The Public

There were no requests to speak during the Call to the Public.

XI. Next Board Meeting Date: May 13, 2009, 8:30 am.

XII. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:44 a.m.