



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

May 13, 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 8:34 a.m.

II. Roll Call

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

III. Approval of Minutes

a. April 8, 2009 Regular Session Minutes.

MOTION: Dr. Kaplan moved to approve the minutes with one change to item VI(a) to read, "Dr. Leonetti moved to lift the probation in effect in this matter. Dr. Polakof seconded the motion." There were no other requested changes. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. April 27, 2009 Teleconference Regular Session Minutes

MOTION: Dr. Polakof moved to accept the minutes as written. Dr. Leonetti seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

IV. Review of Administrative Law Judge Recommendation: The Board will review, discuss, and take action to accept, reject or modify the recommendation of the Administrative Law Judge in the following matter:

a. 06-06-C – Michael Dershowitz: Alleged practice below the standard of care.

Dr. Dershowitz was not present. Attorney Bruce Crawford was present on Dr. Dershowitz's behalf. Christopher Munns, Solicitor General with the Office of the Attorney General, was present to provide independent legal advice to the Board. This matter commenced at 8:36 a.m. with a request to convene an Executive Session.

MOTION: Dr. Leonetti moved to go into Executive Session of the purpose of obtaining legal advice. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

The Board went into Executive Session at 8:36 a.m. and returned to Regular Session at 8:52 a.m.

MOTION: Dr. Kaplan moved to accept the recommended decision of the Administrative Law Judge to dismiss this matter. Dr. Leonetti seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by roll-call vote.

V. Review, Discussion and Possible Action –Review of Complaints (NOTE: The subject matter listed for each agenda item represents the allegation(s) being investigated. The presence of allegations does not automatically indicate violation of Statute or Rule in connection with the practice of podiatry.)

a. 08-47-B – Antonius Su: Alleged billing irregularities.

Dr. Polakof served as the Physician Investigator for this case and is recused from the adjudication process. Dr. Su was not present. Dr. Polakof summarized the complaint and her investigative findings. (There were two allegations: #1 – Dr. Su engaged in inappropriate billing with regard to patient H.G.; and, #2 – Dr. Su engaged in inappropriate billing with regard to patient K.G.) Dr. Polakof found that for both patient H.G. and patient K.G., Dr. Su's billing was inappropriate in that the charges submitted to the respective insurance carriers did not match the treatment and care documented in their medical charts. Dr. Leonetti asked questions which Dr. Polakof answered regarding specific billing codes that were used for the types of treatment reflected in the charts for debridements and "new patient" exams/evaluations. Dr. Polakof also explained that in some instances there were two separate dictations/reports for one patient which reflected different treatments/procedures but for the same date of service. She also stated that a consent form for patient K.G. did not match the actual procedure documented in the chart. Dr. Polakof summarized that she felt both allegations in this matter were substantiated. Upon further discussion, the Board members decided that the applicable Statute violations would not include A.R.S. §32-852, but would include §32-854.01(20)&(23) for each of the two allegations as stated in the Investigation Report. Also added will be §32-854.01(9) with regard to patient K.G.

MOTION: Dr. Leonetti moved to refer this matter to an Informal Interview and simultaneously offer Dr. Su a consent agreement with the same terms as what the Board previously offered to Dr. David Laurino. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. 08-50-M – Scott Maling: Alleged practice below the standard of care.\

Dr. Polakof served as the Physician Investigator for this case and is recused from the adjudication process. Dr. Maling was not present. Dr. Polakof stated she would like to table this matter for Board consideration until the next regularly-scheduled Board meeting to allow corrections to be made in the dates listed in the investigation report. The Board members agreed to table this matter to the June 10, 2009 meeting.

VI. Status Updates: No Board Action – Information Only

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

Ms. Penttinen advised that the next progress report is due in July 2009.

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

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

Dr. Leonetti discussed that Dr. Gaveck did not perform any procedures during the month of April. He asked Ms. Versteegen if there was an update on the court proceedings in Dr. Gaveck's appeal in this case. Ms. Versteegen advised that oral arguments were made last month and the matter is "under advisement" with the court. It could be several months before a final decision is made.

- b. 08-03-C – Elaine Shapiro: Monthly report update. Next quarterly report from Dr. Sucher is due in June 2009.

Ms. Penttinen advised that the next update is due in June 2009.

VIII. Review, Discussion and Possible Action on Administrative Matters

- a. Use of laser treatment for fungal toenail infections.

Dr. Leonetti summarized this topic which was prompted by an article in the New York Times newspaper regarding the FDA clearance and/or approval of lasers for use by podiatrists in treating fungal toenail infections. ("False Start on a Laser Remedy for Fungus," March 20, 2009.) This article was brought to the Board's attention last month by Richard Burt who is the CEO of Nomir Medical Technologies which has developed laser equipment for this purpose and is in the process of trying to obtain FDA clearance. Mr. Burt claims that the laser equipment in use by podiatrists in Arizona, (PinPointe), is not FDA cleared or approved for use in podiatry and that an "off-label" use of that equipment is prohibited by the FDA. Todd Phillips from Thousand Cranes billing company addressed the Board and provided information about the guidance he gives to his clients regarding the proper billing procedures for laser use.

Following discussion, the Board members directed Ms. Penttinen to contact the FDA to obtain information and guidance about the PinPointe brand specifically, and whether there are any other brands of laser equipment which can be used for treating fungal toenail infections.

- b. 08-25-C – Aprajita Nakra: Request to re-open investigation.

Dr. Nakra was present with attorney Edward Ladley. Dr. Nakra addressed the Board and explained her understanding of the timing of events in this complaint which was reviewed by the Board in 2008. Dr. Nakra stated she was not aware that the Board would be reviewing this case for possible action, or that a Letter of Concern had been issued, until after that decision was made and she was asked about it while undergoing a re-credentialing process.

Ms. Penttinen addressed the Board and explained the documentation available in the file. She stated that if a written notification had been sent to Dr. Nakra regarding the Board's review of this case there was nothing retained in the file to reflect that. The Board meeting minutes for October 8, 2008 state that the patient's x-rays were needed, but also a vote to issue a Letter of Concern. Ms. Penttinen also explained that Dr. Nakra has been advised that although her request was to re-open this matter for the purpose of dismissing it, re-opening the matter would allow the Board to take any action within their jurisdiction. There was brief discussion that the Board's decision today would be one of procedure only, not a review of the actual content of the complaint. Dr. Kaplan also asked about what investigation method would be used with regard to assigning a Physician Investigator to this matter because each of the Board members has already reviewed it. Ms. Versteegen advised that there would not be any problem for one of the physician members of the Board to serve as the investigator for this case under the current investigation procedures.

MOTION: Dr. Leonetti moved to grant Dr. Nakra's request to re-open this case. Dr. Polakof seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Following the vote, Dr. Nakra provided Ms. Penttinen with a copy of the patient's x-rays on a CD.

c. CME approval request from Raymond Botte, DPM.

The Board members reviewed Dr. Botte's request for approval of 14 hours of CME for a seminar he completed in September 2008 related to acupuncture treatment of common injuries of the lower extremities. The Board members noted that the seminar was quite extensive and included more than 14 hours of contact time, and that Dr. Botte is also licensed in acupuncture.

MOTION: Dr. Kaplan moved to approve Dr. Botte's request and allow him 14 hours of CME for this seminar. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

d. Discussion on whether or not to open investigation cases on Drs. Paul Daines and Jess Price due to PICA report of a patient request for compensation for "mental and emotional aggravation" because Dr. Daines did not perform surgery.

Ms. Penttinen explained that she had received notifications from PICA about a claim filed against Drs. Daines and Price by a patient of Dr. Daines. Dr. Daines was supposedly going to perform surgery on the patient but left the office where he was working prior to doing the surgery. The patient's claim with PICA is for travel expenses and mental and emotional aggravation. Ms. Penttinen advised that notifications are routinely received from PICA but do not necessarily constitute an official complaint and asked the Board to determine, with Ms. Versteegen's advice, whether complaint investigation files should be opened. She also pointed out that the patient has not filed a complaint directly with the Board. The Board members decided not to take any action on this matter at this time. Complaint investigation files would be opened when or if the patient files a complaint directly with the Board.

e. New license applications – completion of deficiencies: During the April 8, 2009 Board meeting the Board members voted to approve the applications of Drs. Anthony Cole, Ryan Fitzgerald and Paul Ledesma. Drs. Michael Brewer and Carolyn Cole were advised that they could sit for the oral exam but would not be issued a license until their PMLexis scores were received. Dr. Alan Carlson was advised that he would not be allowed to sit for the oral exam until his National Board scores were received.

- i. Michael Brewer – only missing PMLexis score.
- ii. Carolyn Cole – only missing PMLexis score.
- iii. Daniel Fulmer – now complete.
- iv. Gail Johnson – now complete.
- v. Alan Carlson – now complete.

Ms. Penttinen advised that all application deficiencies have been rectified with the exception on Drs. Brewer and Cole not having their PMLexis exam scores. Both of those doctors have been advised that they will be permitted to sit for the oral exam but their licenses will not be issued until we receive passing PMLexis scores. No action is taken for this agenda item.

IX. Review Discussion and Possible Action on License Renewal Applications

MOTION: Dr. Leonetti moved to take the following actions on the following renewal applications:

Randy Bernstein – approved.

Alan Discont – approved.

Brad Hayman – approved.
Jean Kroyn – approved.
Robert Kuvent – approved.
Bruce Levin – approved.

Brent Nixon – approved.
Kelly Reber – approved.
Glen Robison – approved.

Myron Hansen – deficiency for proof of citizenship for license renewal. (Deficiency notice sent May 12, 2009.)

Joseph Knochel – license renewal approve; dispensing registration renewal deficient for DEA certification expiration date and copy of DEA registration. (Deficiency notice sent May 7, 2009.)

Don Shumway – deficiency for CME. All CME was from journals; must have at least 15 hours in hands-on/in-person seminar format.

Isidore Steiner – deficiency for proof of citizenship and CME report. (Deficiency notice sent May 12, 2009.)

Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

The Board clarified that there is no need for licensees to submit copies of all of their CME certificates; completing the CME report with the application is sufficient and licensees may be audited if needed. The Board also authorized Ms. Penttinen to sign the blue wallet-size renewal cards on behalf of the Board and instructed her to re-format those cards to reflect that it is being signed by the Executive Director not the Board's Secretary.

X. Executive Director's Report

a. Open complaint status report.

Ms. Penttinen reviewed the most recent complaint status report generated on May 6, 2009 which reflects that there are currently 31 open complaints, 10 of which have been open for over 180days.

b. Ombudsman's preliminary report and agency response.

Ms. Penttinen summarized that she had received the preliminary report from the Ombudsman's Office and her feeling that it did not reflect the spirit of her discussions with Ombudsman staff when they visited the office in December 2008 to review the files in question and some general vagueness of the report. The Board members briefly discussed that they have some questions for the Ombudsman's Office. They directed Ms. Penttinen to begin drafting a response but also to invite Ombudsman staff to attend the next regularly-scheduled Board meeting to discuss their findings.

XI. Call To The Public

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

XII. Next Board Meeting Date(s):

- a. June 2, 2009, 8:30 a.m. (Special meeting for administration of oral examination for new license applicants.)
- b. June 10, 2009, 8:30 a.m. (Regularly scheduled Board meeting.)

XIII. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:30 a.m.