



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

June 10, 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
Public Member – (Vacant)

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

Dr. Leonetti called the meeting to order at 8:31 a.m.

II. Roll Call

Dr. Leonetti called the roll. All Board members were present with one vacant public member position.

III. Approval of Minutes

a. May 13, 2009 Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

b. May 13, 2009 Executive Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

IV. Informal Interview: Time-specific agenda item scheduled for 8:30 a.m.

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

The Informal Interview began at 8:33 a.m. Dr. Copoloff was present. Dr. Polakof recused herself from the Board's review of this matter as she was the Physician Investigator. Dr. Polakof provided a summary of the allegations in this case which include taking and charging for x-rays which were not necessary and using an unlicensed person to perform the x-rays.

Patient A.K. was present and stated he had no new information to add to his complaint. He confirmed that he had been referred to Dr. Copoloff for a diagnosis of plantar warts to his left big toe and that he did not see the doctor prior to the x-rays being performed. A.K. said Dr. Copoloff's treatment included

removing some dead tissue which was due to cryotherapy which had been done at the ASU health clinic. Dr. Copoloff also applied a gel medication and told him to come back in two weeks for follow-up. The Board asked A.K. what made him decide to file his complaint. A.K. said it was because the x-rays were taken before he saw the doctor, he did not see a need for x-rays, and the person who took the x-rays seemed so uncomfortable that it made him feel uncomfortable.

Robyn Clemmer, a medical assistant in Dr. Copoloff's office, was present and answered questions from the Board. Ms. Clemmer confirmed that she took the x-rays of A.K.'s foot. Ms. Clemmer also confirmed that she is not licensed to take x-rays but that Dr. Copoloff taught her to do them and she thought she was able to do them under his license. She stated she has performed x-rays occasionally. Dr. Leonetti asked Ms. Clemmer how she would know if x-rays were to be taken. Ms. Clemmer said she discussed this patient with the doctor in the morning and asked him if she should take x-rays and he told her yes. Ms. Clemmer confirmed that the doctor did not see the patient before she took the x-rays. Dr. Leonetti asked if all patients have x-rays taken. Ms. Clemmer stated that all patients referred from the ASU clinic do get x-rays as well as other cases depending on the diagnosis. Ms. Clemmer confirmed that she develops the x-rays and explained that in A.K.'s case their film processor was not clean which lead to the poor quality of the films. Dr. Kaplan asked Ms. Clemmer if it was common in their office for x-rays to be taken for a diagnosis of verrucae, and Ms. Clemmer replied that it was because there could be an underlying issue.

Dr. Copoloff addressed the Board and explained that some patients appear at his office with x-rays already done and some do not. He said A.K. had five lesions which covered most of the surface area of the left big toe and that he is inclined to take x-rays on soft tissue masses to rule out an underlying problem. Dr. Copoloff said A.K. never brought up any issue with him about the x-rays and he never saw the patient after this one visit.

Dr. Leonetti asked Dr. Copoloff if it is his routine to have patients x-rayed before he sees them. Dr. Copoloff said it is not routine but does happen occasionally, a small handful of times. Dr. Leonetti stated that it could be okay to take x-ray for verrucae, but the person who took the x-rays is not licensed to do them. Also the quality of the films is so poor that they are of no diagnostic value. Dr. Copoloff began explaining to the Board that if they were notified by phone of a patient in the hospital, he thinks they would order x-rays and other things prior to seeing the patient. Drs. Leonetti and Kaplan and Ms. Reagan responded stating that this incident is not the same situation as a patient who has been admitted to a hospital and that scenario is not relevant. Dr. Copoloff closed his remarks by stating that he is now the only person in his office who takes x-rays and that Ms. Clemmer only develops the films.

Dr. Kaplan stated that he has a concern that the x-rays were unreadable and therefore of no value, and he asked Dr. Copoloff if he charged and was paid for them. Ms. Penttinen stated that the documentation submitted by A.K. indicates there was partial insurance payment with the balance paid by the patient. Dr. Kaplan stated that the payments should be reimbursed. He also asked Dr. Copoloff why the x-rays were not retaken if there were really necessary. Dr. Copoloff stated that he did not think the x-rays were that dark.

There was discussion among the Board members that the first allegation was substantiated on the basis that if the x-rays were necessary they would have been redone, and that the second allegation was substantiated due to Robyn Clemmer's and Dr. Copoloff's admissions that Ms. Clemmer performed the x-rays but its not licensed to do so.

MOTION: Dr. Kaplan moved to issue to Dr. Copoloff a Letter of Concern for poor quality x-rays, taking x-rays before seeing the patient, and use of an unlicensed person to take the x-rays. Dr. Leonetti seconded the motion. Upon discussion Ms. Reagan asked if this type of thing has happened with Dr. Copoloff before. Ms. Penttinen confirmed that Dr. Copoloff's license history included only one Letter of Concern in relation to advertising practices. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

- a. 08-50-M – Scott Maling: Alleged practice below the standard of care. (Postponed from May 13, 2009 Board meeting.)

Dr. Polakof recused herself from the Board's review of this matter as she was the Physician Investigator. Dr. Maling was not present. Dr. Polakof summarized the complaint information which was based on a malpractice claim filed against Dr. Maling alleging general treatment below the standard of care. The Board members asked questions which Dr. Polakof answered regarding the type of surgical procedure performed and the results as demonstrated by pre- and post-operative x-rays. Dr. Polakof summarized her findings and her opinion that the care provided to the patient was below the standard of care and that the doctor's billing was inappropriate.

MOTION: Dr. Leonetti moved to invite Dr. Maling to attend an Informal Interview at the next available date. The motion included adding the violation of A.R.S. §32-854.01(23) for the noted billing issues and to delete the violations of A.R.S. §32-854.01(9) & (16). Dr. Kaplan seconded the motion. There was not further discussion.

VOTE: The motion passed unanimously by voice vote.

- b. 09-06-C – Chad Westphal: Failure to properly supervise a resident physician.

Dr. Kaplan recused himself from the Board's review of this matter as he was the Physician Investigator. Dr. Westphal was not present. Dr. Kaplan summarized the complaint information which alleged that Dr. Westphal failed to properly supervise a resident physician in his office who administered the wrong medication injection to the patient M.A. which caused an allergic reaction. Dr. Kaplan explained that the patient confused many of the people who were involved in her care on the date of the incident and demonstrated confusion even when speaking with the Staff Investigator in this matter. The name of the resident who she thought administered the injection in Dr. Westphal's office was actually the treating physician at the hospital. Dr. Kaplan stated that Dr. Westphal does not have any residents or other physician students in his office. The patient had also stated that she kept her eyes closed during the ambulance ride to the hospital and upon arrival there she thought she was back at Dr. Westphal's office. Dr. Leonetti asked Dr. Kaplan if there was any problem noted by the hospital where the patient was transported with regard to the administration of the injection and Dr. Kaplan said there was not. There was brief discussion as to why the patient was moved within Dr. Westphal's office building in a wheelchair while the staff called 911 for ambulance transportation. Dr. Kaplan expressed his opinion that the patient was not in significant distress and that if she had been the staff would not have moved her from the treatment room. Dr. Kaplan stated his conclusion that the allegation was not substantiated.

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.

VI. Status Updates: No Board Action – Information Only

- a. 07-28-C – Kent Peterson: Monthly status update.
Ms. Penttinen advised that the next status report is due in July 2009.

b. Status of Consent Agreement offered to Dr. Su in case number 08-47-B.
Ms. Penttinen advised that she is working on the language in the Findings of Fact and it will be forwarded to Dr. Su prior to the Informal Interview scheduled for the July 2009 Board meeting. Dr. Leonetti asked to confirm if the terms were the same as what was offered in Dr. Laurino's consent agreement. Ms. Penttinen and Dr. Polakof explained that the Findings are different due to different billing codes but the terms of the Order portion are the same.

- c. Status of appeal filed by Dr. Gaveck in case number 06-04-C.
Ms. Verstegen explained that the matter is still under advisement in the Court of Appeals.

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

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

Ms. Penttinen advised of a letter received from attorney Bruce Crawford stating that Dr. Gaveck did not perform any surgeries in the month of May. She also stated that the one-year probation period was set to expire on May 5, 2009. Dr. Leonetti asked if Dr. Gaveck has officially requested termination of his probation as required under the agreement, and Ms. Penttinen stated he has not.

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

Ms. Penttinen advised that the last report from Dr. Sucher was received in May. The next regular report is due in August and she has not received any report from Dr. Sucher regarding non-compliance.

VIII. Review, Discussion and Possible Action on Administrative Matters

a. Agency response to Ombudsman's report.

MOTION: Dr. Leonetti moved to go into Executive Session to obtain legal advice and to discuss the information contained in the Ombudsman's report as it is confidential in nature. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote and the Board went into Executive Session at 9:45 a.m.

The Board returned to Regular Session at 10:10 a.m.

MOTION: Dr. Leonetti moved to adopt attachment #2 in the Ombudsman's report regarding a policy for postponement of complaint review as the Board's policy. Dr. Polakof seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Following the vote, the Board members instructed Ms. Penttinen to draft the Board's policy to reflect the same language as in the attachment to the Ombudsman's report, to include direction that upon receipt of a request for postponement the Executive Director will contact the Board President or another Board member who will decide whether to approve or deny the request.

IX. Review, Discussion and Possible Action on Administrative Matters

a. Records retention schedule.

The Board reviewed the agency's records retention schedule which was last filed in July 2002 and discussed making the following changes:

- Tape recordings of Board meetings (item number 2.b): change from "one month after transcribed" to "one month after the minutes are approved."
- Complaint files with no subsequent complaints within three years (item 4.a): eliminate this category as it does not pertain to this agency.
- Letters of Concern (item 4.e): change from "transfer to file" to "retain in office in license file for five years after date of action then purge and store with Records Management Division."
- Individual license files (item 10.e): change from "three years after non-renewal" to "twenty years after non-renewal."
- Renewal applications (item 10.g): change from "two years after received" to "as long as license is active, then 10.e applies."
- All remaining items will not be changed.

MOTION: Dr. Leonetti moved to officially make these changes to the Board's records retention schedule. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. Public Information procedures.

Ms. Penttinen asked the Board members to discuss what information should be provided to the public and under what circumstances. Specifically, the Board reviewed a written license verification form which is an automated form generated by the database and includes the following information: Current date, licensee name and address of record, license number, issue date, expiration date and a listing of any disciplinary actions or Letters of Concern. Ms. Penttinen explained that this form is embossed and signed by her, and if there are any disciplinary actions or Letters of Concern she attaches copies of those to the form. The Board members stated that this information was sufficient for license verification. Next the Board members reviewed a printout from the Board's website which illustrates the information which is available via the Internet and includes the following information: Licensee name and address of record, phone number, license number, license status, issue date, expiration date and a listing of any disciplinary actions or Letters of Concern. Ms. Penttinen confirmed that there are links to the actual Letters of Concern and disciplinary documents. She also clarified that the only information not available on the website is the number of complaints a licensee has received in the last five years, but that information is provided if license history information is requested by telephone. Upon discussion, the Board members decided that the information on the website is sufficient but that language should be added to indicate that complaint information for the last five years can be obtained by calling the Board's office. In addition, Letters of Concern will only remain in the license file, and therefore be available to the public, for five years.

Next the Board discussed what information would be available to the public regarding complaints which have been dismissed. The Board members decided that, in accordance with A.R. S. §32-852(M), the specific allegations in complaints which have been dismissed is not public record; the only information which will be disclosed is the total number of complaints received in the last five years.

The Board also confirmed that any personal information such as a licensee's age or date of birth, social security number, or examination scores is not public record. In addition, any request for information about where a licensee went to school can be obtained via a written public records request and payment of the associated fee(s).

The Board members also discussed the fee for written license verification requests which is currently \$10.00 per request. There was discussion regarding whether the fee is appropriate or should be increased. Ms. Penttinen explained that the current fee does accommodate for her actual time to prepare the verifications and related documents and the necessary postage fees. She also stated that many outside entities would be able to retrieve the information they need directly from the Board's website if there was a confirmation on the website that the Board conducts primary source verification of application information and that the Board and/or Board staff are the only persons who have the ability to control the information available on the website. The Board members agreed with adding such language to the website.

In conclusion, Ms. Penttinen stated she would draft a Public Information Guidance Policy and provide it to the Board for their review and approval at the July 8, 2009 Board meeting.

c. Consent Agreement offered to Dr. J. David Brown in case number 09-17-B.

Bruce Crawford appeared on behalf of Dr. Brown. Ms. Verstegen advised the Board that she would present the Consent Agreement information but could not provide the Board with legal advice on the matter. The Board discussed Finding of Fact paragraph 14 specifically for the language of "significantly in excess of the legal limit" instead of the actual blood alcohol level. The Board also discussed Order paragraph 20(H) which requires that Dr. Brown be available for interviews with the Board or the Executive Director on a quarterly basis or upon reasonable notice. Dr. Leonetti expressed disagreement with that language and stated it should read "the Board" or "the Board and the Executive Director." There was discussion between the Board members, Mr. Crawford, Ms. Verstegen and Ms. Penttinen to clarify that the language as written does not take any authority away from the Board but allows them to

delegate to Ms. Penttinen, only if they wish to do so, the ability to interview Dr. Brown on their behalf and report her findings back to the Board.

MOTION: Dr. Kaplan moved to adopt the Consent Agreement as presented. Dr. Polakof seconded the motion. There was no further discussion.

VOTE: Ms. Penttinen called a roll-call vote. Drs. Kaplan and Polakof voted yes. Dr. Leonetti voted no. Ms. Reagan abstained. The motion passed 2-1-1.

Following this agenda item the Board recessed at 10:37 a.m. and reconvened at 10:43 a.m.

- d. Discussion of statutes and rules pertaining to oral exam dates and procedures, and licensure requirements for regular and provisional licenses.
 - i. Application of Dr. Timothy Fisher

The Board reviewed with Ms. Penttinen and Ms. Verstegen the Statutes and Rules pertaining to license application and oral examination deadlines. It was noted that Dr. Fisher desires to work as a Fellow for a program at University Medical Center which would begin on July 1, 2009 but he was not able to participate in the Board's oral exam administered on June 2. His application was received on May 13, 2009. The Board reviewed Dr. Fisher's application and supplemental materials and completed the administrative and substantive reviews, concluding that his application is complete and he meets the requirements for licensure.

MOTION: Dr. Polakof moved to approve Dr. Fisher's application and issue his license upon his successful completion of an oral exam, which she will administer. Dr. Leonetti seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

X. Executive Director's Report

- a. Open complaint status report.

Ms. Penttinen reviewed the open complaint status report which shows that as of June 3 there are 33 open complaints, 14 of which have been opened for 180 days or more.

- b. Update on Board's Continuation Bill.

Ms. Penttinen advised that the Board's continuation bill passed in the House of Representatives by a vote of 55-3 and has now moved over to the Senate. She has been able to meet with 3 of the 7 members of the Senate Health Committee who seemed pleased with the Board's progress on the recommendations made during the sunset review. She has provided information packets to the members she has not been able to meet with. The bill is scheduled to be heard before the Senate Health Committee on June 17, 2009 at 9:00 a.m.

- c. Status of contact with FDA regarding use of lasers in podiatric care.

Ms. Penttinen advised that she has twice attempted to contact Timothy Ulatowski at the FDA by phone but without success. She has been able to confirm that he is the appropriate person to speak with but has been told that this FDA office is in the process of moving. Ms. Penttinen stated she will send a written letter to Mr. Ulatowski and continue to try to reach him by phone.

XI. Review Discussion and Possible Action on License Renewal Applications

MOTION: Dr. Leonetti moved to approve the license renewal applications, and dispensing registrations where applicable, for the following licensees:

David Agoada
Jason Allen
David Armstrong
Stephen Barrett
Edward Bodmer

Scott Boggs
John Charski
Sanford Chesler
Teishe Chiarelli
Kelvin Crezee

Paul Daines
James Dancho
Anthony DeMaria
Joseph Dobrusin
Dale Feinberg

William Fishco
Gary Friedlander
Ryan Golub
Mark Gorman
Arnold Gross
William Harant
Daniel Hatch
Carrie Hess
Petrusia Howansky
David Jaffe
Michael Kates
Lee Keenen

Edward Kelly
Paul Kim
Lester Klebe
Gregg Krahn
Ladislav Kuchar
Herbert Lee
Robert Levine
Adam Lu
Stanley Lubeck
John Marin
Paul McMaster
Spencer Niemann

Robert Novack
Sara Otero-Quintero
Anthony Rosales
Gilbert Shapiro
Alan Shih
Jerome Steck
Kathleen Stone
Phillip Tutnauer
Paul Warner
Lee Zielsdorf

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

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Polakof moved to approve the license renewal applications and / or dispensing registrations for Scott Evans, Corina Hollander, Travis Jensen upon staff's receipt of information or documents identified as deficient in each respective application. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Polakof moved to approve the license applications for Jeffrey Copoloff and Chad Westphal upon staff's receipt of a written explanation correcting their respective applications to reflect that they were the subject of complaint investigations in this State. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Polakof moved to approve the dispensing registration renewal of Don Shumway with previous deficiencies now corrected. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

Dr. Kaplan recused himself from the Board's review of his renewal application.

MOTION: Ms. Reagan moved to approve Dr. Kaplan's renewal application. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

Dr. Leonetti recused himself from the Board's review of the renewal application of William Leonetti.

MOTION: Dr. Kaplan moved to approve Williams Leonetti's renewal application. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

Dr. Polakof recused herself from the Board's review of her renewal application and that of Arlene Polakof.

MOTION: Dr. Kaplan moved to approve the renewal applications of Dedrie Polakof and Arlene Polakof. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

XII. Call To The Public

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

XIII. Next Board Meeting Date:

Ms. Penttinen clarified that there was a typo on the agenda for the next Board meeting. The correct meeting date is July 8, 2009.

XIV. Adjournment

There being no other business before the Board, the meeting was adjourned at 12:25 p.m.