



Janice K. Brewer
Governor

State Of Arizona Board of Podiatry Examiners
"Protecting the Public's Health"

1400 W. Washington, Ste. 230, Phoenix, AZ 85007; (602) 542-3095; Fax: 542-3093

Barry Kaplan, DPM; Joseph Leonetti, DPM; Dedrie Polakof, DPM;
Jeanne Reagan, Public Member; Jose Villanueva, Public Member; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

February 10, 2010; 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

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

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

Dr. Polakof called the meeting to order at 8:33 a.m.

II. Roll Call

Dr. Polakof noted for the record that all Board members were present as were Ms. Verstegen and Ms. Penttinen.

III. Approval of Minutes

a. January 13, 2010 Regular Session Minutes.

MOTION: Ms. Reagan moved to accept the minutes as written. Mr. Villanueva seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

IV. 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. 08-44-C – Alex Bui: Charging or collecting an excessive fee; inappropriate billing.

Dr. Kaplan recused himself as he was the Physician Investigator for this case. Dr. Bui was not present. Dr. Kaplan reviewed for the Board members the allegations and his findings in his Investigation Report and attached notes. Initially, the Board subpoenaed complete charts and billing records for forty (40) patients. Following an objection to the Board's subpoena, ten (10) patient charts were selected at random. Review of those ten charts shows repetitive and consistent misuse of billing codes including upcoding and unbundling of global codes. Specifically, review of the billing codes which Dr. Bui used for patient consultations, and the time required to be spent with the patient(s) for those codes, demonstrates that there would not have been enough actual time in the day for Dr. Bui to have spent that much time with each patient. Dr. Polakof noted that Dr. Bui frequently used level 5 billing codes which are not typical for the practice of podiatry. Dr. Kaplan and the Board members discussed the misuse of several specific codes. Dr. Kaplan stated that he not find any billings for these ten patients which were supported by the patients' charts. It was noted for the record that the billing issue with Cigna insurance which prompted this investigation has been resolved and Dr. Bui already has demonstrated to the Board that he properly reimbursed Cigna. Ms. Penttinen and the Board members recalled for the record that during a previous appearance before the Board Dr. Bui admitted he had engaged in upcoding, specifically stating that if he did not feel the reimbursement he was going to receive was fair or

appropriate he would upcode to gain additional reimbursement. Dr. Leonetti stated that he feels the allegations in this case are substantiated by the evidence and demonstrate egregious violations.

MOTION: Dr. Leonetti moved to refer this matter to an Informal Interview before the Board at the next available date. The motion includes direction to Board staff to refer this matter to the Maricopa County Attorney's Office for their review and investigation of insurance fraud. Dr. Polakof seconded the motion. There was brief discussion on the motion regarding whether or not the other thirty (30) patient charts which were initially requested should be obtained. The Board elected not to pursue that at this time. There was also brief discussion offered by Ms. Reagan as to whether or not the Board also should refer this matter to the Arizona Department of Insurance. The Board elected not to take such action at this time as they do not believe it would be effective. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

b. 09-18-C – J. Barton Ripperger: Failure to maintain adequate records.

Dr. Kaplan recused himself as he was the Physician Investigator for this case. Dr. Ripperger was present with attorney Bruce Crawford. Dr. Kaplan summarized the complaint which was received from Blue Cross/Blue Shield of Arizona. The complaint initially alleged that Dr. Ripperger billed for orthotics patient L.B. but failed to deliver them, and that he failed to produce the patient's medical records to support the billing claims submitted to BCBS. However, following submission of their complaint BCBS was able to verify that the patient did receive the orthotics in question; the only remaining concern was the length of time it took for Dr. Ripperger to produce the request records to verify the charges he billed. Dr. Kaplan concluded that the allegation of failing to maintain records and produce them upon request was substantiated.

Dr. Ripperger addressed the Board and answered their questions regarding his practice status. He stated he formerly practiced out of three different offices; however, he has been on sabbatical for the last 18 months and is not practicing. Dr. Ripperger stated he has retained custody of all his former patients' records. He explained to the Board that he believed he had an appropriate system in place at his former offices to collect his mail and notify him of records requests and he did not realize there was a problem with that system until the present situation arose. He also stated that with this particular patient there was a problem with office staff not getting the orthotics molds to the lab which caused additional delays.

Dr. Kaplan drew the Board's attention to A.R.S. §32-3210 which requires all healthcare professionals to have a written protocol for records storage and retention. Dr. Leonetti stated he would like to see a copy of Dr. Ripperger's written policy for records retention and production, particularly while he is still on sabbatical and not practicing. The Board decided to table this matter and request that Dr. Ripperger appear at the March 2010 Board meeting to review his records retention and production policy. Final decision in this matter is tabled until that time.

V. Status Updates: No Board Action – Information Only

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

Ms. Penttinen advised that the last quarterly update was received in November 2009. She has requested another update from Dr. Peterson's attorney but it has not been received yet.

b. Status of appeal filed by Dr. Gaveck in case number 06-04-C.

Ms. Verstegen advised the Board that the Supreme Court denied Dr. Gaveck's petition for review; the decision of the Court of Appeals stands. Ms. Verstegen will advise the Board of any further action that needs to be taken in this matter.

VI. Review, Discussion and Possible Action – Probation / Disciplinary Action Status Reports

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

Dr. Polakof reviewed the letter submitted by Dr. Gaveck's attorney advising that the doctor did not perform any surgeries in the month of January 2010. Dr. Gaveck also has not yet requested termination of his probation.

b. 08-03-C – Elaine Shapiro: Monthly update.
Ms. Penttinen reviewed the update received yesterday from Dr. Sucher which indicates that Dr. Shapiro is in full compliance with all requirements of her monitoring program.

c. 08-18-C – David Laurino: Monthly update.

d. 08-47-B – Antonius Su: Monthly update.

Dr. Leonetti advised the Board that he has reviewed the most recent records submitted by both Dr. Su and Dr. Laurino and has found no problems or billing irregularities. He found one concern of a possible wrong code used for ingrown toenail removal being used by both doctors (code 99213-25). Dr. Polakof will review the billings in detail and discuss with the Board at the next Board meeting.

e. 09-17-B – J. David Brown: Monthly update

Ms. Penttinen advised the Board that the last update was received last month; therefore, the next update from Dr. Sucher will be due in April 2010. Dr. Kaplan stated that he thought the Board would be requesting monthly updates. After brief discussion it was determined that the Board had previously reviewed the possibility of requesting monthly updates but ultimately decided to remain with quarterly updates. Ms. Penttinen reviewed with the Board Dr. Sucher's commitment to provide immediate notification to the Board in case of any non-compliance.

VII. Review, Discussion and Possible Action on Administrative Matters

a. New license application review for:

i. Marie Paul, DPM

ii. Robert Andersen, DPM

The application files of Dr. Paul and Dr. Andersen were reviewed by all Board members. It was determined that both applicants have submitted all necessary information and there are no deficiencies.

MOTION: Dr. Polakof moved to approve the applications of Drs. Paul and Andersen and allow them to sit for the oral exam in June 2010. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. Correspondence regarding criminal charges for billing fraud.

The Board members reviewed correspondence submitted by Dr. Kaplan regarding a physician who was prosecuted criminally for fraudulent billing. There was discussion among the Board members as to whether this information could or should be recognized by the Board when investigating allegations of improper billing. Ms. Versteegen advised the Board that this correspondence references a criminal matter which is ongoing and not yet fully resolved, therefore it does not have a legal precedential value and is not binding on this Board. Ms. Versteegen explained that the Board's jurisdiction is separate from a criminal proceeding but if the Board felt it necessary they could refer any case for review with the Attorney General's Office, the Department of Insurance or the County Attorney's Office.

c. Discussion of procedures for malpractice cases currently being investigated by the Board.

Ms. Penttinen requested direction from the Board with regard to handling of malpractice cases reported to the Board in light of last month's decision by the Board not to automatically open an investigation case. Specifically, Ms. Penttinen asked how the Board wanted to proceed with those malpractice cases which already are being investigated. The Board members decided that those cases already in process will proceed and be completed. From this point forward Ms. Penttinen will include on each meeting agenda a list of any malpractice case notifications she has received. Ms. Penttinen also advised the Board that she has made initial contact with the five malpractice insurers as directed by the Board and asked for their assistance in notifying this agency of a malpractice filing. She was told by those companies that because there is no legal requirement for them to do so it is unlikely they will be able to provide such notices.

VIII. Executive Director's Report

a. Open complaint status report.

Ms. Penttinen advised that she has been having some recent difficulties with her computer and was not able to print the complaint status report, but there are currently approximately 42 open complaints. Ms.

Reagan questioned the high number of open complaints. There was brief discussion from the other Board members in relation to the new investigation procedures being utilized by the Board which can contribute to cases being open for longer periods of time.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. March 10, 2010, 8:30 a.m.

XI. Adjournment

There being no other business before the Board the meeting was adjourned at 10:41 a.m.