



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

March 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 8:31 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. February 10, 2010 Regular Session Minutes.

MOTION: Dr. Polakof moved to accept the minutes with the following corrections: Page 1, agenda item IV(a), the sentencing reading, "Dr. Polakof noted that Dr. Bui frequently used level 5 billing codes which are inappropriate for the practice of podiatry." Replace the word "inappropriate" with "not typical." On page 2, agenda item IV(b), second paragraph, the sentence reading, "He stated he formerly practiced out of three different offices; however, he has been on sabbatical for the last 18 months and is no practicing." Change the word "no" to "not." And Page 3, agenda item VII(a), the name "Dr. Robertsen" should be corrected in two places to reflect the name Dr. Robert Anderson." Dr. Kaplan seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

a. 08-50-M – Scott Maling: Practice below the standard of care. (Previously reviewed by the Board and referred to formal hearing with the possibility of a voluntary consent agreement.)

Dr. Maling was not present. Dr. Polakof was recused as she was the Physician Investigator for this case. Dr. Leonetti served as the acting President for this case. Dr. Polakof presented her findings are reviewed the notes in the patient's chart which show different suggestions for surgical options on each office visit. There were questions from the Board about whether the surgical consent form signed by the patient was accurate. The Board members stated that a request should be made to obtain any and all consent forms from Dr. Maling's chart and from the hospital where the surgery was done. Dr. Polakof also stated that there was evidence of incorrect coding for the surgery – code 27691 was incorrect and should have been 27690. Also the code 28285 for arthroplasty was not correct.

The Board members reviewed correspondence from Dr. Maling's attorney which states that the patient has voluntarily dismissed their malpractice action with a \$0.00 settlement agreement. Ms. Penttinen also

advised that she now has a copy of a deposition the patient gave during the course of the litigation. Following brief additional discussion the Board decided to table this matter for further investigation. Ms. Penttinen will provide a copy of the patient's deposition to Dr. Polakof and this will be presented again at a future Board meeting.

MOTION: Dr. Leonetti moved to table this case for further investigation, to rescind the Board's previous referral to formal hearing, and to rescind the consent agreement previously offered to Dr. Maling. Dr. Kaplan seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

b. 09-10-M – Michael Dershowitz: Practice below the standard of care; failing to disclose a malpractice action on his license renewal application.

Dr. Dershowitz was not present. Dr. Kaplan recused himself as he was the Physician Investigator for this case. Dr. Kaplan summarized his findings in this case. He does not believe that the nerve decompression surgery performed by Dr. Dershowitz was improper and did not find any deviation from the standard of care. With regard to Dr. Dershowitz failing to disclose the malpractice action on his license renewal application, Dr. Kaplan found that this allegation was substantiated. There was brief review of previous discussion offered by Dr. Dershowitz's attorney who stated that there was no intention for Dr. Dershowitz to purposely not disclose the malpractice action, and that there would have been no reason for him to try to withhold it from the Board as the Board would have eventually discovered the information through notifications from other entities. The Board members reiterated their previous opinion that notifications from other entities do not relieve Dr. Dershowitz of his duty to report the matter.

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

VOTE: The motion passed unanimously by voice vote and the Board adjourned into Executive Session at 9:26 a.m.

The Board returned to Regular Session at 9:36 a.m.

MOTION: Dr. Polakof moved to dismiss this case with a Letter of Concern to Dr. Dershowitz for failing to disclose the malpractice case on his license renewal. Dr. Leonetti seconded the motion. Upon discussion, Ms. Reagan stated she would like the Board to issue a non-disciplinary Order for continuing education. Dr. Leonetti stated that he has a problem with the renewal application but questions whether this rises to the level of disciplinary action or an Order for continuing education. He stated that such an Order is designed to rehabilitate the licensee in some way, but questioned what rehabilitation could be done in this situation. Dr. Leonetti further stated that there is an issue with the wording in the Board's statutes of "knowingly" making a false statement on the renewal application. By signing the renewal application and having it notarized, Dr. Dershowitz confirmed that he was aware of all the information contained therein; however, Dr. Leonetti feels that a Letter of Concern is the most appropriate course of action in this case. Also, a Letter of Concern can be taken into account in future Board actions. There was no further discussion.

VOTE: The motion passed unanimously by roll-call vote with Dr. Kaplan recused.

c. 09-14-C – J. David Brown: Charging or collecting an excessive fee.

Dr. Brown was not present. Dr. Kaplan recused himself as he was the Physician Investigator for this case. Dr. Kaplan summarized the case, stating it involved upcoding to a billing code L2116 for a cam walker. The amount billed was \$795.00. Dr. Brown was previously requested to correct the billing for this patient and reimburse the patient's insurance which he has done. Dr. Kaplan had requested additional billing records which have not been received. Ms. Penttinen explained that a subpoena was issued for the records Dr. Kaplan was requested. However, Dr. Brown's attorney filed an objection to the subpoena which listed several reasons for the objection, the main reason being his belief that the

subpoena was based on ex-parte communications between Dr. Kaplan and the staff at Dr. Brown's office. The objection was forwarded to Ms. Versteegen and the Board now needs to decide how to respond to it. There was brief discussion among the Board members and Ms. Versteegen regarding what steps can be taken if the Board is unable to obtain the requested records. Following that discussion the Board decided to table this matter for now. Direction was given to Ms. Penttinen and Ms. Versteegen to re-issue the same subpoena and if another objection is received follow-up in Superior Court should be pursued to enforce the subpoena.

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

Dr. Ripperger was not present. Dr. Kaplan recused himself as he was the Physician Investigator for this case. The Board previously reviewed this case at the February 10, 2010 meeting and tabled it for further information. Dr. Ripperger was asked to submit a copy of his policy for medical records storage which he has now done. Dr. Kaplan summarized his investigative findings and Dr. Ripperger's records policy. The Board is satisfied with the information presented.

MOTION: Dr. Polakof moved to dismiss this case with no action. Dr. Leonetti seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

V. Status Updates: No Board Action – Information Only

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

Dr. Polakof read into record the latest update received from Dr. Paterson's attorney dated February 16, 2010 which indicates Dr. Paterson is still in settlement negotiations with the federal government and that another tolling agreement has been entered into. This matter remains ongoing at this time.

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

Ms. Versteegen advised that she just received the official decision of the Supreme Court which denied Dr. Gaveck's Petition for Review. The decision upholds the previous ruling of the Court of Appeals. There was brief discussion among the Board members as to what steps need to be taken next. Ms. Versteegen advised this is the final decision of the courts. She will forward a copy to the Board for review and action.

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

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

Dr. Polakof reviewed for the record the correspondence from Dr. Gaveck's attorney indicating he performed no surgeries during the month of February 2010.

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

Ms. Penttinen advised the last quarterly report was received and reviewed last month. The next regular report from Dr. Sucher is due in May 2010. There have been no reports of non-compliance.

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

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

Dr. Leonetti reviewed agenda items VI(c) and (d) together and advised the Board that both Dr. Laurino and Dr. Su and in compliance with their consent agreements and all billing appears to be appropriate.

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

Ms. Penttinen advised the last quarterly report was received and reviewed in January. The next regular report from Dr. Sucher is due in April. There have been no reports of non-compliance.

VII. Review, Discussion and Possible Action on Administrative Matters

a. CME approval request from Dr. Alan Carlson

Dr. Carlson submitted a request for CME approval to attend a conference by the American College of Lower Extremity Surgeons on April 22-25, 2010. Dr. Polakof advised she would abstain from voting in this matter as she will be a presenter at this conference. The Board members reviewed the information submitted by Dr. Carlson and there were no questions.

MOTION: Dr. Kaplan moved to approve Dr. Carlson's request. Dr. Leonetti seconded the motion. There was no discussion on the motion.

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

b. Discussion of use of lasers to treat fungal toenail infections.

Ms. Penttinen explained that she received a request for information in relation to Dr. Kerry Zang and the use of the specific device "Erchonia EVRL laser." This laser was approved by the FDA in May 2005 to treat certain dermatologic conditions and Dr. Zang had inquired as to whether it could be used to treat fungal toenail infections as those infections can be classified as dermatologic in nature. Ms. Penttinen contacted the FDA and received direction from that agency via email that the only dermatologic condition for which the Erchonia EVRL laser has been approved is acne vulgaris; there currently is no laser device which has been FDA-cleared or –approved to treat fungal toenail infections. There was brief discussion among the Board members regarding other forms of treatment for that condition and that the issue at hand presently is the prohibition on advertising. The Board directed Ms. Penttinen to send Dr. Zang a copy of the information she received from the FDA regarding this specific laser.

VIII. Executive Director's Report – Review, Discussion and Possible Action

a. Open complaint status report.

The Board reviewed the report which shows 46 open complaint investigations at this time. There was discussion regarding the length of time some complaints have been open. The Board determined that for future reports the name of the assigned investigator should be included. Ms. Penttinen stated she will add that information.

b. Staff request for permission to hire part-time temporary administrative staff to assist with annual license renewals.

Ms. Penttinen stated she was seeking Board approval to hire one temporary, part-time administrative assistant to help her during the license renewal season. She stated that last year the processing and data-entry required approximately 10-15 hours per week. She would like to hire one assistant at a rate of \$10.00 per hour to work 10-15 hours as needed to assist with the license renewals only. Ms. Penttinen advised that there is sufficient funding in the agency budget to accommodate this action. There was brief discussion among the Board members in agreement with the request and Dr. Polakof directed Ms. Penttinen that the administrative assistance should be obtained.

c. Discussion of reporting requirements for CME with this years license renewals.

Ms. Penttinen stated she wanted to clarify whether the Board members would like to have all licensees submit copies of their CME certificates with their renewal applications or simply complete the CME report portion of the application. After brief discussion among the Board members it was decided that it would not be necessary for all licensees to submit copies of their certificates, but the Board can audit them at random or as needed after reviewing the CME reports.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. April 14, 2010, 8:30 a.m.

XI. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:27 a.m.