



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;
Jeanne Reagan, Public Member; Jose Villanueva, Public Member; Sarah Penttinen, Executive Director

DRAFT BOARD MEETING MINUTES

April 14, 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

The Agenda for the meeting is as follows:

I. Call to Order

Dr. Leonetti called the meeting to order at 8:34 a.m.

II. Roll Call

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

III. Approval of Minutes

a. March 10, 2010 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 with Dr. Polakof not present.

b. March 10, 2010 Executive Session Minutes.

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

VOTE: The motion passed unanimously by voice vote with Dr. Polakof not present.

c. March 31, 2010 Teleconference Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote with Dr. Polakof not present.

d. April 2, 2010 Teleconference Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote with Dr. Polakof not present.

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

a. 08-44-C – Alex Bui: Charging or collecting excessive fees. (Consideration of consent agreement offered by Dr. Bui.)

Dr. Bui was not present. Dr. Kaplan recused himself as he was the Physician Investigator for this case. He summarized the billing records he had reviewed on an additional 39 patients which had the same

billing patterns as the charts previously reviewed. Dr. Polakof was absent during the initial discussion of this case but rejoined the meeting while discussing the consent agreement offered by Dr. Bui's attorney. Drs. Leonetti and Polakof noted that three billing codes were left out of that agreement (99215, 99245, and L4396). Dr. Leonetti stated he does not feel the consent agreement is strong enough. He feels the Board should proceed with the Informal Interview already scheduled. Dr. Polakof agreed with that and because Dr. Leonetti will be absent for the May 2010 Board meeting the Informal Interview will have to be postponed until June. Ms. Penttinen stated the Board could also make a counter-offer if they feel a consent agreement is acceptable. Ms. Reagan asked what disciplinary terms were customary for a case like this. Ms. Verstegen stated the Board could offer whatever terms they feel are necessary and appropriate. The Board members decided not to make a counter offer and agreed with moving forward with the Informal Interview. The consent agreement offered by Dr. Bui's attorney will not be accepted.

b. 09-09-M – Aprajita Nakra: Practice below the standard of care; improper billing.

Dr. Nakra was not present. Dr. Polakof recused herself as she was the Physician Investigator for this case. Dr. Leonetti served as the acting President. Dr. Polakof reviewed that this malpractice case stemmed from a post-operative infection. The patient had been referred to Dr. Nakra from Dr. Connell for a surgical evaluation of left foot pain. On June 21, 2007 Dr. Nakra performed a pan-metatarsal head resection. On July 2, 2007 the patient contacted Dr. Nakra's office with a complaint of strange odor from the surgical site. The patient was seen in the office that day and immediately admitted to the hospital for IV antibiotics.

Drs. Kaplan and Leonetti asked about the post-operative course of care and why the patient was not seen sooner. Dr. Polakof stated the patient should have been seen within seven days. Dr. Kaplan also noted that the patient's chart shows Dr. Nakra removed the fixation pins from the patient's foot on July 2 before sending her to the hospital. All the Board members agreed that Dr. Nakra accurately recognized the gangrene infection. Dr. Leonetti stated the patient should have been seen within two-four days post-operatively, and Dr. Polakof noted that this was also a high-risk patient.

There was discussion about the billing codes being incorrect for dates of service of June 13, June 18 and July 2. Dr. Leonetti stated the billing is a concern but more important is the post-operative course of care. Ms. Reagan also asked questions about the pain medication given to the patient, the pre-op instructions, and why the post-operative wound care in the hospital was different from what the patient had been instructed to do at home. Dr. Polakof explained the differences in the standard of care for office-based treatment vs. in-patient hospital care. Dr. Leonetti stated he wanted to speak directly with Dr. Nakra about this case. Dr. Kaplan asked if Dr. Polakof could contact Dr. Nakra, and the patient if necessary, to discuss the length of time between the surgery and the first post-op office visit as well as wound care instructions. Dr. Polakof will do so and provide a supplemental report to the Board. This matter is tabled for this further investigation. Attorney Bruce Crawford who represents Dr. Nakra in this matter was present and stated he has copies of depositions from the patient and Dr. Nakra from the civil suit and can provide them to the Board. Dr. Polakof will review those and then contact Dr. Nakra and/or the patient if needed.

c. 09-24-C – Paul Woodward: Charging for services not rendered.

Dr. Polakof recused herself as she was the Physician Investigator for this matter. Dr. Leonetti served as the acting President. Dr. Woodward was not present. Dr. Polakof reviewed the complaint which was filed by the patient's daughter alleging that Dr. Woodward charged for services not rendered to the patient in an assisted-living facility on February 7, 2009. Dr. Polakof stated she reviewed Dr. Woodward's records for the patient and spoke with the staff at the assisted-living facility and confirmed that the patient did receive services, (toenail debridement), on that date. Dr. Polakof also explained that the complainant had filed a complaint with Medicare. Medicare found that Dr. Woodward had upcoded by one level, but Dr. Woodward already has reimbursed them for the difference. Dr. Polakof also stated the patient is on Aricept, (a medication for the treatment of Alz Heimer's symptoms), and may be a poor historian. And again, the patient's chart at the assisted-living facility states she did receive services on that date. Dr. Leonetti stated that since the billing issue has been resolved he finds no indication of any violations.

MOTION: Dr. Leonetti moved to dismiss this case, finding no violation of Statute or Rule. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

d. 06-04-C – Alan Gaveck: Final decision issued by the Supreme Court. Dr. Gaveck was not present. Attorney Bruce Crawford was present on Dr. Gaveck's behalf. Ms. Verstegen reviewed the previous actions in this matter as follows: The Board previously issued to Dr. Gaveck a Decree of Censure and Order of probation. That action was based on the Board's findings that Dr. Gaveck failed to obtain a written informed consent prior to a surgical procedure and that he failed to meet the standard of care by not referring the patient for a vascular consultation. The Order required monthly submission of surgical records for one year and 15 hours of continuing medical education. Dr. Gaveck appealed the Board's action to the Maricopa County Superior Court which upheld the Board's decision in whole. Dr. Gaveck appealed that decision to the Court of Appeals which affirmed the Board's action in part, vacated it in part, and remanded it back to the Board. The action upheld was in relation to the informed consent. The action which was vacated and remanded was the issue regarding standard of care based on the Court of Appeals' finding that the Board did not provide to Dr. Gaveck proper notice (via the notice of informal interview) of the expected standard of care in relation to the vascular consultation. [The informal interview notice in this regard referenced A.R.S. §32-854.01(20).] Dr. Gaveck appealed to the Arizona Supreme Court which upheld the opinion of the Court of Appeals.

Dr. Polakof reviewed correspondence from Mr. Crawford which suggests the Board issue a Letter of Concern. There was discussion between Mr. Crawford and the Board members about this during which time Dr. Leonetti stated he does not believe a Letter of Concern is acceptable for failing to obtain consent for a surgical procedure, even though this was for a second procedure intended to correct a problem from the original procedure. Ms. Verstegen advised the Board of all options available to them at this point and explained that all disciplinary action has been vacated at this point. Dr. Leonetti stated he felt a Decree of Censure was appropriate when originally issued and he still feels the same. Upon questioning from Dr. Leonetti and the other members of the Board Ms. Verstegen advised that they could issue a Decree of Censure based on the sole violation of failing to obtain written informed consent. Dr. Kaplan stated he did not want to proceed with another informal interview for the issue of standard of care but feels the violation regarding informed consent should stand. Dr. Leonetti recommended stating A.R.S. §32-854.01(9) as the violation in this matter as the Board's final decision.

MOTION: Dr. Leonetti moved to issue to Dr. Gaveck a Decree of Censure for failing to obtain written informed consent. The censure should include six months probation and four hours of continuing medical education on malpractice and consent forms. Dr. Kaplan seconded the motion. There was no further discussion.

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

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 February; the next update is due next month.

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

a. 06-04-C – Alan Gaveck: Monthly update. This agenda item was resolved in discussion under agenda item IV(d).

b. 08-03-C – Elaine Shapiro: Monthly update. Ms. Penttinen advised that the last quarterly report from Dr. Sucher was received in February; the next report is due next month. She has not received any reports from Dr. Sucher of any non-compliance with Dr. Shapiro's monitoring requirements.

c. 08-18-C – David Laurino: Monthly update and comprehensive review of compliance with consent agreement.

d. 08-47-B – Antonius Su: Monthly update and request for CME approval. Agenda items VI(c) and (d) were discussed together. Neither Dr. Laurino nor Dr. Su was present. Dr. Leonetti advised that he had reviewed the most recent records submitted and had one billing question to

discuss with Dr. Polakof and the Board. The specific question was regarding the use of billing codes 99213-25 and 11750 which both doctors have used consistently, but Dr. Leonetti was uncertain if they were appropriate. After review, Dr. Polakof advised she believes the codes have been used appropriately. Dr. Leonetti advised that all other portions of the records he reviewed appear to be correct and in order.

The Board also reviewed a request from both Dr. Laurino and Dr. Su for approval to attend a continuing medical education seminar by the American College of Foot and Ankle Surgeons in Chicago in May of this year. This would require that Dr. Laurino be granted an extension to complete the CME requirements of his consent agreement because his one-year probation ended on April 7, 2010. Attorney Bruce Crawford had submitted a request for extension and was present to address the Board. Dr. Leonetti suggested that Dr. Laurino attend a 2-day seminar by the American Association of Podiatric Practice Management in Phoenix in May. The number of hours to be spent on billing was unknown. Dr. Kaplan phoned the meeting coordinators for AzPMA and learned that only one hour will be on billing.

After reviewing the information on the Chicago seminar the Board members determined that it would be eligible for six hours of billing CME for both doctors. There also was discussion about completing online or journal-review courses and the Board advised Mr. Crawford that both doctors have that option as long as they get approval from the Board for the course content. They suggested that Mr. Crawford and/or his clients contact PICA for further information on obtaining additional CME's

MOTION: Dr. Kaplan moved to approve Dr. Laurino's request for extension and allow him until July 1, 2010 to complete all 25 hours of billing CME. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Following the vote Mr. Crawford asked the Board members if Dr. Laurino still would need to submit his charts every month. Ms. Penttinen advised that she had received the charts for March and up through April 7 and would be giving those to Dr. Leonetti today for his review. Dr. Polakof told Mr. Crawford that the Board will advise if the monthly chart submissions are still required after the March and April records have been reviewed.

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

Ms. Penttinen reviewed the update received from Dr. Sucher dated April 12, 2010 which indicates Dr. brown is in compliance with all monitoring requirements and is progressing well.

(The Board recessed from 9:48 a.m. to 9:55 a.m.)

VII. Review, Discussion and Possible Action on Administrative Matters

a. Request from the American Podiatric Medical Association for approval of CME credit for their 2010 annual conference.

The Board members reviewed and briefly discussed the APMA request and conference brochure submitted to the Board. Ms. Reagan asked to confirm that the Board has always approved the annual APMA. The physician Board members explained that is true; however, the APMA now has begun requesting specific, written approval from state boards to provide that information to the conference attendees.

MOTION: Dr. Leonetti moved to approve APMA's conference for CME for Arizona podiatrists. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. New License Applications

- i. Erwin Friedman, DPM
- ii. Janna Kroleski, DPM
- iii. Jay Larson, DPM
- iv. Brian Lepow, DPM
- v. Ryan Shock, DPM

The Board member reviewed the application files and there was brief discussion regarding the applicants' educational background and a police report in Dr. Friedman's file. Upon review, that police report was not about Dr. Friedman but was a report sent to the Illinois Secretary of State regarding the notary public who authenticated a portion of the application form. During discussion Dr. Polakof inquired if the remaining Board members wished for her to prepare the questions for the oral exam on June 9, 2010. All Board members were in agreement for her to do so.

MOTION: Dr. Leonetti moved to approve the applications for Drs. Friedman, Kroleski, Larson, Lepow and Shock, and to allow each of them to sit for the oral exam. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

c. Recent AHCCCS changes in reimbursement of podiatric services.

Ms. Penttinen addressed the Board regarding information that she had placed on the Board's website asking licensees to contact the Board office regarding the recent changes to AHCCCS reimbursement. Ms. Penttinen had asked licensees to report the percentage of patients and/or percentage of revenue which would be lost due to the reimbursement changes. Shortly after that information was posted on the website she received calls from Board members asking about it and she then removed it pending Board meeting discussion. Ms. Penttinen stated that since the AHCCCS changes are quite significant she assumed the Board would want to capture relevant data and it is an administrative duty which she felt was appropriate for her to complete. Dr. Leonetti stated that state podiatric association would be the appropriate agency to collect that type of information and that this is not a Board issue in any way. Dr. Polakof stated that every podiatrist will be affected to some degree. Drs. Polakof and Kaplan agreed with Dr. Leonetti's comments. Ms. Penttinen stated at the time she thought the data might be valuable in the future, but she apologized to the Board and stated that on similar future issues she will not do anything unless/until specifically directed to do so by the Board.

d. Review and approval of 2010 license renewal application form.

The Board members reviewed the renewal application form which is a combined license renewal and dispensing registration renewal form. The Board members like the format. There was discussion regarding the continuing education portion of the form. Ms. Penttinen pointed out that she added an item to ask the licensees if they have been required to complete additional CME due to a disciplinary order or agreement with the Board which the Board members stated was good. Also for CME, the Board members stated there is no need to specify not attaching copies of CME certificates or the Board's reserved right to audit CME if necessary. That statement will be removed, and Ms. Penttinen will correct the pagination and a grammatical error on the last page.

e. Review and approval of written Public Information Guidance Procedure.

The Board members reviewed the written procedure drafted by Ms. Penttinen. There was discussion among the Board members and Ms. Verstegen regarding the fees for directory requests for commercial purposes. Ms. Verstegen advised the Board is able to charge more than the current fee of 25 cents per page and that many other boards do charge higher fees. The Board asked Ms. Penttinen how many commercial directory requests she receives and who they are from. She stated she receives an average of one per month and they are usually from companies such as pharmaceutical distributors, DME distributors or marketing firms. The Board members discussed various fees, the current number of active podiatrists, the value of the information, and the amount of the fee retained by the Board.

MOTION: Dr. Polakof moved to adopt the procedure as written with one change to increase the commercial-use directory fee to \$3.00 per name. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Ms. Penttinen will document the fee change in the written procedure and forward to Dr. Polakof for signature.

- f. Correspondence from the Department of Veteran's Affairs regarding registering as their vendor in order to receive payment for license verification requests.

The Board members reviewed a letter received from the V.A. Healthcare Network in Albany, NY. The letter is marked as an "urgent notice" stating that the Board must register as a vendor in their system and that a "mandatory" response is required. Ms. Penttinen explained that she has received numerous requests from multiple V.A. hospitals for license verifications. However, they will not pay the \$10.00 verification fee because the Board is not a registered vendor. In order to register as a vendor the Board would have to obtain a Dun & Bradstreet number, which incurs a monetary fee, and then go through the V.A.'s registration process. Ms. Penttinen stated that she has advised V.A. facilities that we are not able to register as vendors and should not be required to do so because we are not requesting information from them, they are requesting information from us. She stated that the Board had various options including going through their vendor registration process or refusing to do so. The Board also could waive the license verification fee for V.A. facilities although that may cause problems with other facilities also wanting the verification fee waived. There was brief discussion and agreement among the Board members that there is no reason for this agency to be required to undergo such an extensive process if it is another entity which is requesting information from us.

MOTION: Dr. Polakof moved to refuse the V.A. request to register as a vendor. Dr. Leonetti seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

- a. Open complaint status report.

Ms. Penttinen reviewed the complaint status report which shows 45 open complaints and the information written in regarding the status of each case. Ms. Reagan questioned the length of time that some complaints have been open. Ms. Penttinen explained that when a complaint is received she has been trying to gather all necessary documents and records so that the complete file can be given to the investigator once for review. However, this often includes reviewing extensive records and sending multiple subpoenas which can cause long delays. Ms. Penttinen addressed this issue with Dr. Polakof earlier this week and suggested a change to this process where she will forward the file to the investigator as soon as the response is received from the subject of the complaint. The investigator can then advise what, if any, additional records or information is needed. That way the three physician investigators can be reviewing the files simultaneously rather than her doing one file at a time. Ms. Penttinen also advised that she has nine files to distribute to the physician investigators today.

- b. Compliance with previous agency Audit and sunset review; 18-month progress report is due to the Joint Legislative Audit Committee on April 19, 2010.

Ms. Penttinen advised she had been contacted by the Office of the Auditor General and requested to submit an update of the Board's progress in implementing the recommendations made during the last sunset review audit. She stated the Board already has completed nearly all recommendations. The remaining items include public information guidance, records retention schedule, and written procedures for documenting and retaining license applicant qualifications. The public information guidance has been addressed today. The records retention schedule was discussed at a previous Board meeting and Ms. Penttinen stated she has been trying to contact State Archives for approval of the schedule but has been having some difficulty there. She does not expect there to be any problem with approval as the Board's schedule meets minimum retention periods; it is just a matter of getting in contact with Archives. Regarding the documentation for license applicant qualifications, Ms. Penttinen stated she had already advised the Auditor General's office of the application checklists which were created for both new applications and renewals based on requirements outlined in Statutes and Rules. These checklists simply need to be incorporated into a written procedure and will be forwarded to the Board for review and approval.

IX. Call To The Public

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

X. Next Board Meeting Date:

- a. May 12, 2010, 8:30 a.m. Dr. Leonetti and Mr. Villanueva both stated they will be unable to attend the May Board meeting. There was discussion among the Board regarding the need for a quorum to review new complaint investigations and the physician Board members recusing themselves on cases where they served as the investigator. Following brief discussion the Board decided that the May meeting will not include review of any new complaint investigations or any Informal interviews. The meeting will include probation reviews and other administrative issues.

XI. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:56 a.m.