



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; Barbara Campbell, DPM;
Jeanne Reagan, Public Member; John Rhodes, Public Member; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

January 12, 2011; 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

Board Members: Joseph Leonetti, D.P.M, President
Barry Kaplan, D.P.M., Member
Barbara Campbell, D.P.M., Member
Jeanne Reagan, Secretary-Treasurer
John Rhodes, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

Dr. Leonetti called the meeting to order at 8:43 a.m.

II. Introduction of new Board member: John Rhodes, Public Member.

III. Roll Call

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

IV. Approval of Minutes

a. December 8, 2010 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.

b. December 8, 2010 Executive 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.

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

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

Dr. Peterson was present with attorneys Bruce Crawford and Edwin Gaines. Mr. Gaines addressed the Board and summarized that the issue in this case began in the summer of 2007 and involved an audit of Dr. Peterson's use of the CPT code 10060 (for incision and drainage) for the period of January 2000 through April 2007. This was investigated by the US Attorney's Office. Litigation was contested but a settlement agreement was reached whereby Dr. Peterson will re-pay approximately ten percent of the Medicare reimbursement he received during that time period. Mr. Gaines stated that approximately 15,000 procedures from that time period were audited, and he affirmed that Dr. Peterson has completed CME in the areas of billing and coding and has taken corrective action in his office to prevent any future problems of this nature. The Board is in receipt of a copy of the settlement agreement as well as a very

extensive “Compliance Plan Manual,” essentially a policy manual for billing and coding, which is now in place with Dr. Peterson’s practice.

Dr. Peterson addressed the Board and stated he had previously somewhat avoided billing and coding issues or CME courses, but he has now completed several seminars in the last three years. He stated he has been able to develop contacts for billing and coding questions (notably “CodingLine.com”), and has corrected the misuse of codes, particularly the code in question, 10060. He also has been having his charts audited by another physician who provides him with feedback for corrections or improvements.

Mr. Gaines stated that Dr. Peterson was not assessed a civil penalty and there are no criminal charges in this matter. He also stated that attorney Kevin West of PICA was the person who helped develop the new billing and coding procedure manual.

Dr. Leonetti stated that taking additional seminars in this area was a very good idea, but he advised Dr. Peterson to be cautious of where he receives billing instruction from. He stated that CodingLine.com is a very good source in information, and he said it is very good that Dr. Peterson has developed contacts he can easily access when he has billing or coding questions. There was some discussion among the Board members, Dr. Peterson, and his attorneys regarding the proper use of code 10060. Dr. Leonetti stated the trouble comes from using that code with there is no use of local anesthesia. Mr. Gaines stated that Medicare conducted an audit on Dr. Peterson in 1991 on the same code and the feedback was that everything was essentially OK at that time. Mr. Gaines also stated that Dr. Peterson was audited by Noridian in 2001 for the same thing and was not told of any problems with his use of that code. He agreed that ultimately it is the doctor’s responsibility to make sure they are using the correct code, but these two audits advised Dr. Peterson that everything was fine. Dr. Leonetti and Kaplan pointed out that there are often changes to codes over the course of several years. Mr. Gaines agreed and said he felt there really is not enough communication about those changes from Medicare to the providers. The Board members were in agreement with that statement.

Dr. Kaplan pointed out that the Board’s investigation case began with a complaint filed by Pacificare regarding one patient, then the US Attorney’s Office became involved. He asked if all 15,000 procedures reviewed by Medicare were for the code 10060. Mr. Gaines stated that approximately 75-80 percent were. Dr. Leonetti said it appears that the proper code to be used for most of the procedures was 11730. Dr. Kaplan also asked if Dr. Peterson had been terminated from Medicare participation. Mr. Gaines stated he was not; there was no disciplinary action, probation, or penalties involved, just a reimbursement of overpayments.

Dr. Leonetti stated that the Board needs to decide if any action should be taken for the initial complaint received from Pacificare. He stated he would like to see some chart evaluations. Mr. Crawford stated that Dr. Peterson would be willing to accept a reasonable consent agreement. There was a lengthy discussion among the Board members, Dr. Peterson, and his attorneys regarding the proper use of billing codes 10060, 10061, and 11730, and the specific procedures associated with those codes. Dr. Leonetti stated that with most other cases like this in the past, (involving the US Attorney’s Office), there is almost always a civil penalty or threat of legal action or jail time. Mr. Gaines stated there was proof that patients were seen and that some type of treatment was provided, just that the wrong codes were used. He also stated there was no attempt to defraud and usually when there is no fraud involved there are no civil penalties assessed.

MOTION: Dr. Leonetti moved to find Dr. Peterson in violation of “charging or collecting an excessive fee” and to offer Dr. Peterson a consent agreement for probation for three months during which time Dr. Peterson must submit to the Board of copies of all charts for codes 10060, 10061, and 11730. Chart submissions are due on the 15th of each calendar month for the previous month’s charts. And Dr. Peterson must formally request termination of his probation following that time period. Dr. Kaplan seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

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

Ms. Penttinen advised that the last progress report from Dr. Sucher was received in November 2010. She has not received any reports of non-compliance. Dr. Shapiro has agreed to be present at the Board meeting in February for a probation status interview.

b. 08-12-C – Elaine Shapiro: Review of probation CME requirements and completion of probation.

Ms. Penttinen reviewed that Dr. Shapiro was issued a non-disciplinary Order for 10 hours of CME in the area of hospital charting and protocols. The Board had previously voted to approve seven hours of CME which Dr. Shapiro was completed with her 2010 license renewal. Dr. Shapiro has now submitted documentation of her completion of the remaining hours. The Board reviewed that documentation and determined that Dr. Shapiro has completed the CME requirements in this case.

MOTION: Dr. Leonetti moved to approve the CME submitted by Dr. Shapiro. Dr. Campbell seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

c. 09-13-M – Patrick Farrell: Monthly update.

Dr. Leonetti reviewed the documentation submitted by Dr. Farrell indicating that in the month of December he did not perform any surgical procedures as defined in his consent agreement.

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

Ms. Penttinen reviewed the progress report received from Dr. Sucher dated January 5, 2011 which indicates Dr. Brown is in compliance with all monitoring requirements. There was discussion among the Board members regarding the last time Dr. Brown appeared before the Board for a probation status interview. Ms. Penttinen stated she was uncertain of the exact date but she believed it was in the early fall. Dr. Leonetti directed Ms. Penttinen to request Dr. Brown to appear the February 2011 meeting.

VII. Review, Discussion and Possible Action on Administrative Matters

a. Election of Board officers.

MOTION: Dr. Leonetti nominated Dr. Kaplan to be the Board's President. Dr. Campbell seconded the nomination. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Leonetti nominated Ms. Reagan to continue as the Board's Secretary-Treasurer. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. Review of license renewal application for Dr. Noland Jones.

Dr. Jones was present. Ms. Penttinen reviewed the history of Dr. Jones' 2010 renewal application and CME requirements. The Board initially reviewed the renewal application on August 11, 2010 and determined that additional information was needed regarding the CME Dr. Noland reported. A written letter was sent to Dr. Jones on that date asking for additional information and advising that the Board would review that information at the next Board meeting. She contacted Dr. Jones in mid September and he stated he would submit the information in time for the October 13 Board meeting. However, no information was received by that date and during the Board meeting the Board members voted to deny all but 6.75 hours of Dr. Jones' CME. A letter was sent to Dr. Jones on October 19 advising him that he was being allowed 60 days to complete an additional 18.25 hours of CME and that at least 11.25 hours must be in a direct instruction or seminar format. Ms. Penttinen did receive the additional CME information on December 21, 2010 but was able to confirm that it was all completed by December 17.

The Board reviewed the CME information submitted by Dr. Jones and discussed it with Dr. Jones. They agreed that the specific seminar at the University of Texas was a great program and that Dr. Jones has completed all the license renewal requirements.

MOTION: Dr. Leonetti moved to accept Dr. Jones' CME and approve his license renewal application. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

a. Open complaint status report.

b. Malpractice case report.

- i. Dr. Scott Maling: Settlement on 11/17/10 in case for patient K.J., previously investigated and dismissed by the Board. (08-39-M)
- ii. Dr. Stanton Cohen: Filing of claim on 11/16/10 by patient D.R., unknown allegations. (Not previously reviewed by the Board.)
- iii. Dr. Kelvin Crezee: Filing of claim on 11/03/10 by patient D.D. claiming permanent nerve damage due to alleged improper surgery. (Not previously reviewed by the Board.)
- iv. Dr. David Lee: Filing of claim on 11/03/10 by patient D.W. claiming improper surgery. (Not previously reviewed by the Board.)

The Board members reviewed all malpractice reports. The case involving Dr. Maling was already investigated so no further action will be taken by the Board. Investigation files will be opened for the remaining three cases.

c. Status of sunset review and requested statute changes.

Ms. Penttinen reviewed the Committee of Reference meeting from December 2010 at which time that committee made a recommendation that the Board be continued for the maximum allowable ten years. She also advised that Senator Nancy Barto is sponsoring the Board's continuation bill. She learned yesterday at 11:30 a.m. that the continuation bill will be heard in the Senate Health Committee today at 2:00 p.m. Ms. Penttinen said she is confident that the Senate committee will accept the recommendation of the Committee of Reference to continue the agency for ten years.

With regard to the Board's proposed statute changes, Ms. Penttinen advised that she met with Senator Barto yesterday to discuss. Sen. Barto agrees with the proposed changes and will have her staff open the bill folder. However, due to her bill load Sen. Barto asked if the Board could find another sponsor for the bill, but if no other sponsor can be found she will sponsor it. Ms. Penttinen stated she has contacted Sen. John Nelson's office to request a time to meet with him on this matter but she has not heard back from his staff yet. Dr. Leonetti asked if the AZPMA lobbyist Joe Abate had been advised of the proposed changes. Ms. Penttinen advised that she had previously provided Mr. Abate with a copy of the board's written response to the sunset review which included the proposed changes, and she also provided him with a separate document with only the statute changes. She has not received any specific feedback from Mr. Abate on behalf of the association.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. February 9, 2011 at 8:30 a.m.

XI. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:54 a.m.