



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**

February 9, 2011; 8:30 a.m.  
1400 West Washington St., B1  
Phoenix, AZ 85007

Board Members: Barry Kaplan, D.P.M, President  
Joseph Leonetti, 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. Kaplan called the meeting to order at 8:35 a.m.

**II. Roll Call**

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

**III. Approval of Minutes**

a. January 12, 2010 Regular 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.

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

a. 08-44-C – Alex Bui: Review of Consent Agreement offered to Dr. Bui.

Dr. Bui was not present. Dr. Kaplan recused himself as he was the investigator for this case. He summarized that this case began with a complaint filed with the Board by Cigna Insurance regarding fees charged by Dr. Bui. Dr. Bui has already refunded money to Cigna for overpayments he received as a result of up-coding. The Board previously reviewed 40 patients' billing records and randomly chose 10 to compare to the patients' charts. Those 10 charts showed a pattern of excessive billing and fraudulent charges. Those charges were in relation to orthotics, initial office visits, some surgeries, and prosthetic management. Dr. Kaplan noted that the time period of patient records reviewed by the Board was very short; if the same billing practices were utilized in all Dr. Bui's charts this is an extensive problem. He also stated that he not aware of any reimbursements made to any insurance company other than Cigna, but it appears the inappropriate billing was going on for a very long time before this matter was reported to the Board.

Ms. Penttinen advised that, based on the Board's previous review of this case, a Consent Agreement has been offered to Dr. Bui. The violations stated in that agreement are "knowingly making false or fraudulent written statements (due to falsified billing)," and "charging or collecting a clearly excessive fee." The Order terms include suspension of Dr. Bui's license for three months, probation for two years, a civil penalty of \$2,000.00, completion of 25 hours of continuing medical education in the area of billing, and monthly submission to the Board of copies of all patient charts and billing records for all durable medical equipment charges. Dr. Bui has not yet decided whether he will accept the agreement.

However, when the Board previously voted to offer the agreement, there was no decision made as to the next course of action if Dr. Bui did not accept it.

Dr. Leonetti asked Dr. Kaplan if he had reviewed the Consent Agreement. Dr. Kaplan stated he has, but the agreement does not address reimbursing the over-charging with other insurance companies. Ms. Verstegen was asked if that requirement could be added to the agreement. She stated it could; however, if this matter were to go to a formal hearing a judge could not make such a requirement.

Dr. Kaplan stated that a more extensive audit of Dr. Bui's charts could be done to review charges billed prior to the start of this investigation. He feels confident that such an audit would reveal widespread misuse of billing codes and upcoding. There was discussion among the Board members, Dr. Kaplan and Ms. Verstegen regarding the Board's options and whether the Board has sufficient evidence of Dr. Bui's violations. Ms. Verstegen advised that she feels the Board has enough information to take action against Dr. Bui's license and that more examples of the same type of billing violations would not be necessary.

Dr. Leonetti stated that a time limit should be given for Dr. Bui to accept the Consent Agreement. He feels that if Dr. Bui does not accept it then the case should be referred to a formal hearing for the purpose of revoking Dr. Bui's license. There was brief discussion among the Board members in agreement with this course of action.

**MOTION:** Dr. Leonetti moved to allow Dr. Bui two weeks from today's date to accept the Consent Agreement. If he does not, the case should be referred to a formal hearing for revocation. Ms. Reagan seconded the motion. There was no discussion on the motion.

**VOTE:** The motion passed unanimously by voice vote.

b. 10-26-C – Joseph Knochel: Possible physical condition affecting his ability to practice.

Dr. Knochel was present with attorney Dan Jantsch. He addressed the Board and began to explain the surgical procedures he had completed for the patient related to this case. Dr. Kaplan stated the Board's inquiry at this time does not yet involve any question about quality of care and he asked Dr. Knochel to discuss the events which led to this complaint. Dr. Knochel stated that a nurse was punctured by forceps during the surgery. Drs. Kaplan and Leonetti asked Dr. Knochel about the complainant's allegation that he impaled his finger with a K-wire during the surgery. Dr. Knochel stated that never happened but at a later point in the surgery he did tear his glove with a burr although there was no skin puncture. Dr. Knochel briefly spoke about his current practice of not "double-gloving" because his hands become numb. Dr. Leonetti stated he has experienced the same problem with double-gloving so he does not feel this would be an indication of any type of neuropathy.

Dr. Leonetti asked Dr. Knochel what action the hospital took in this matter. Dr. Knochel stated he has not received anything in writing from the hospital but he was not allowed to do any surgeries until he was medically cleared. He has now submitted to the hospital documentation from two physicians stating he is safe to practice. Dr. Leonetti stated the Board's initial concern is Dr. Knochel's safety and fitness to practice. This investigation case was expedited due to the potential quality of care concerns; however, the evaluation report submitted by Dr. Lipton (one of the physicians who evaluated Dr. Knochel) indicates that any condition Dr. Knochel may have does not affect his ability to perform podiatric surgery.

Dr. Kaplan stated one of his main concerns was that the patient involved was a known IV drug user in the past and had Hepatitis C. Therefore, a puncture to anyone with this patient's fluids is a big concern. Dr. Knochel stated he was not aware of the patient being a former IV drug user. Dr. Kaplan stated it was documented in the patient's records. Dr. Kaplan also stated he felt the nurse had a good reason to be concerned and upset. He asked Dr. Knochel if he punctured the nurse's finger with the forceps and Dr. Knochel stated he assumed that he did.

Dr. Leonetti stated that in his review of the case he feels that the concerns raised by the nurse who was punctured, as well as the anesthesiologist that was present, was due to Dr. Knochel's lack of concern about the incident. He does not feel Dr. Knochel's ability to practice should be limited as that is a hospital issue and not for the Board to decide. However, if Dr. Knochel's condition worsens he needs to

be able to recognize it and address it appropriately. Dr. Kaplan agreed that a practice limitation would not be needed at this time but if another incident like this were to occur it would be very bad. He feels a Letter of Concern is appropriate to document this matter for reference in case of a future problem.

**MOTION:** Dr. Kaplan moved to dismiss this matter with a Letter of Concern to Dr. Knochel for maintaining sterile techniques during surgery and for maintaining awareness of tactile function in his hands. Ms. Reagan seconded the motion. There was no discussion on the motion.

**VOTE:** The motion passed unanimously by voice vote.

## **V. Review, Discussion and Possible Action – Probation / Disciplinary Action Status Reports**

a. 08-03-C – Elaine Shapiro: Monthly update and probation status interview.

Dr. Shapiro was present. Dr. Kaplan reviewed the most recent progress report from Dr. Sucher which indicates that Dr. Shapiro is in compliance with all monitoring requirements and is progressing well in her recovery. Dr. Shapiro advised the Board that she feels she is in a great recovery program. She attends three 12-step meetings per week, meets with a therapist weekly, and attends two Caduceus meetings per month where there are approximately 75 physicians in the Tucson area who are in recovery. Dr. Shapiro states she must call in every day for random drug testing and she is tested between two and five times per month. Her sobriety date is 07/22/08.

Dr. Kaplan asked Dr. Shapiro if she had regained hospital privileges and Dr. Shapiro said she had. (Privileges at St. Mary's Hospital.) Dr. Leonetti asked her how many surgeries she has been doing. Dr. Shapiro said she does one to three per week, mostly at outpatient facilities. Dr. Leonetti further asked how that contrasts to her previous surgery schedule. Dr. Shapiro stated she does fewer surgeries now because she is more selective with patients to make sure they are good surgical candidates. Dr. Leonetti also asked about her patient volume in the office. Dr. Shapiro stated it is back to the level it was before she went into treatment. Dr. Leonetti asked what the stress level was in the office and why. Dr. Shapiro stated there is very little stress in her office, mostly because she is there more often and that she has a very supportive staff. Dr. Leonetti stated it is good that being in the office is not a source of stress and that Dr. Shapiro needs to be aware of stress triggers that could cause problems for her. Each of the Board members stated that Dr. Shapiro appears to be doing very well and congratulated her on her progress.

The Board recessed from 9:41 a.m. to 9:47 a.m.

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

Dr. Kaplan 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.

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

Ms. Penttinen advised that Dr. Brown is scheduled to appear at the March 9, 2011 Board meeting for a probation status interview.

## **VI. Review, Discussion and Possible Action on Administrative Matters**

a. Consideration of requiring primary source verification for completion of residency for new license applicants.

Ms. Penttinen advised that she receives numerous requests from hospitals, insurance companies and credentialing firms for information about the Board's process of verifying education and training requirements for new license applicants. The Board currently does primary source verification for podiatry school but not for residency. Ms. Penttinen stated she is asked frequently why the Board does not do primary source verification for residency so she wanted to pose the question to the Board members whether they would like to change the Board's current policy on this.

There was discussion among the Physician Members about residency programs in that some are not permanent programs. If the Board were to require primary source verification it would cause difficulty for those applicants whose programs no longer exist because the only documentation available is the

certificate they received upon completion. Dr. Leonetti recommended that the Board not change its current policy. All Board members were in agreement.

- b. Consideration of collecting Board certification information for licensees to include in database and public profiles.

Dr. Kaplan stated there are a very high number of different national board certifications available to podiatrists and it would be very difficult to track them all. He is aware that other Boards track this information and make it available to the public. Ms. Penttinen stated she receives many requests from the public about board certification when a license verification is done. When she explains that the Board currently does not track this information she is asked why so she wanted to ask the Board members to review if this was something they would like to begin tracking. Dr. Leonetti stated that he does not feel this is within the Board's responsibility. He stated the goal of the agency is to license and regulate podiatrists; board certification is separate from that. The other Board members agreed and decided that board certification information will not be gathered by this Board.

- c. Consideration of purchasing 2011 editions of CPT and ICD-9 books.

Ms. Penttinen stated she wanted to confirm permission from the Board to purchase 2011 editions of CPT and ICD-9 books. The cost is approximately \$200.00-\$300.00. The Board reviewed the purchasing catalog and agreed with making this purchase.

## **VII. Executive Director's Report – Review, Discussion and Possible Action**

- a. Open complaint status report.

The Board reviewed the report which indicates there are currently 58 open complaints including the two reviewed by the Board today. There are several scheduled for the March 9 Board meeting and additional cases with investigators at this time. With the addition of outside consultants the number of open cases should begin to decrease quickly. Dr. Kaplan asked about the status case number 07-11 for Dr. Brown because it has been open for four years. Ms. Penttinen stated that she still cannot obtain an update from DEA on the status of their investigation.

- b. Malpractice case report.
  - i. None at this time.

- c. Legislative report.

- i. SB 1044 – Continuation bill.

Ms. Penttinen advised that the Board's continuation bill passed in the Senate with a vote of 20-7. It is being sent over to the House and Ms. Penttinen has contacted all House Health Committee members to try to schedule time to speak with them about the bill. She will advise the Board members when it is scheduled for Committee hearing.

- ii. SB 1315 – Statute changes.

Ms. Penttinen advised that Senator Rick Murphy is sponsoring the bill. The language stated in the "strike-through" version stated in the bill includes all the changes requested by the Board. Ms. Penttinen has contacted all Senate Health Committee members to try to speak with them about this bill and had made some appointments already. She will advise the Board members when it is scheduled for Committee hearing.

- iii. HB 2259 – Reduction of salary.

Ms. Penttinen explained that this bill was introduced by Representative Ed Ableser and states: "For fiscal year 2011-2012, the compensation of the director or other administrative head of each budget unit is decreased by ten percent." This could potentially lead to a sweep of the Board's cash in an amount equal to the salary reduction. Ms. Penttinen explained that she attempted to contact Mr. Ableser but he has not responded to her messages. However, she did receive a response from one of the bill's co-sponsors who stated the bill was filed "to make a point" but no other information was provided. Ms. Penttinen stated she will keep the Board advised of the status of this bill.

- d. Budget status: Proposed sweeps of Board cash.

Ms. Penttinen reviewed the documents of the Governor's proposed budget and fund sweeps pertaining to the Podiatry Board. The Board's current revenue and expense projection estimates that the Board will

have \$84,420 in cash at the end of this fiscal year. The Governor has proposed to sweep \$61,900 of that money before the end of the current fiscal year and an additional \$13,300 in FY 2012. Ms. Penttinen explained that the sweep amounts were based on revenue projections submitted to the Governor from the Board's analyst at the Office of Strategic Planning and Budgeting. However, the OSPB estimates were inaccurate and significantly overestimated the Board's revenue for the current fiscal year. Ms. Penttinen has spoken at length with OSPB staff to explain the Board's revenue cycle as nearly all Board revenue comes from license renewal fees which overlap the start and end of each fiscal year. She has had a great deal of difficulty working with OSPB and has submitted to them a report detailing the total number of active licensees the Board has had for each of the last 10 years to demonstrate a more accurate revenue projection. She has not heard back from OSPB yet but will continue to monitor this situation.

**VIII. Call To The Public**

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

**IX. Next Board Meeting Date:**

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

**X. Adjournment**

There being no other business before the Board, the meeting was adjourned at 10:25 a.m.