



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;
M. Elizabeth Miles, Public Member; John Rhodes, Public Member; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

April 13, 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
M. Elizabeth Miles, 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 8:32 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. March 9, 2010 Regular Session Minutes.

Dr. Kaplan noted in agenda item IV(d), investigation case 09-34-C for Dr. J. David Brown, there was an error in the Motion regarding the wording of the findings regarding billing. Ms. Miles suggested that the wording should state "the patient's billing records were inconsistent with the procedure described in the patient's chart." Dr. Kaplan agreed. Dr. Kaplan also noted several spelling and typographical errors.

MOTION: Dr. Kaplan moved to approve the minutes with the corrections as noted. Dr. Campbell seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

a. **09-09-M – Aprajita Nakra, DPM: Declined invitation to informal interview and request for formal hearing.**

Dr. Nakra was not present but was represented by attorney Bruce Crawford. Investigator Dedrie Polakof, DPM was present. On March 9, 2011 the Board voted to invite Dr. Nakra to attend an Informal Interview regarding this case. The Board now reviews Dr. Nakra's decline of the invitation and request for a formal hearing through the Office of Administrative Hearings. The Board reviewed the allegations in this case, which are practice below the standard of care for improper surgery and improper billing. The Board discussed referring the case to a formal hearing and whether or not any further information could be obtained from Dr. Nakra to resolve the concerns in this case in lieu of a formal hearing. There was discussion between Mr. Crawford and the Board regarding the current investigation procedures and how the Board may be able to address questions to the licensee without having to proceed to a formal hearing. Mr. Crawford suggested conducting more investigational interviews with the licensees before the investigator forwards their report to the Board. Another issue is that the licensees frequently do not appear before the Board at the time the Board conducts its initial review of the case (not an Informal Interview) so they are not available to answer questions from the Board which may resolve the Board's concerns.

Ms. Verstegen advised that the Board could refer a case back to the investigator if they want follow-up on specific items. Ms. Miles added that there is a fine line the Board must be wary of between conducting an interview regarding an ongoing investigation or just asking some follow-up questions when reviewing the investigator's completed report. If the Board has questions for the licensee then they could refer it back to the investigator for follow-up on certain areas, but not specific, pointed questions.

Mr. Crawford said that he and his clients are willing to work with the investigators during the investigation process, but he would like to have an idea of the investigative findings prior to the Board's initial review so that the licensees can be aware of the Board's concerns. There was discussion regarding providing the licensees with a copy of the investigation report prior to the Board's initial review. Ms. Verstegen advised that the Board could do so even though the report is not a public record because in the event of an Informal Interview or Formal Hearing the licensee would receive it anyway. There was agreement among the Board members that the investigation report can be given to the licensees at the time the case is agendized. Ms. Verstegen will work with Mr. Crawford to resolve this and Ms. Penttinen will put an item on the May meeting agenda to revise the Board's written policy to include this step.

MOTION: Ms. Miles moved to provide a copy of the investigation report to the licensee or their attorney prior to the Board's initial review of the case. Dr. Kaplan seconded the motion. Upon discussion, Dr. Leonetti clarified that the item on today's agenda regards the licensee's refusal to participate in the Informal Interview and want to go forward with a Formal Hearing; the current motion does not address that. Ms. Miles stated she could offer an additional motion for that but what she intended to address in the present motion was that she does not feel Ms. Verstegen and Mr. Crawford need to come to any agreement for this type of procedure; this is an issue the Board can decide on its own. Mr. Rhodes stated he feels legal counsel should confer with one another and come to a conclusion on how to handle this. Ms. Miles disagreed and stated the Board should make this decision. Dr. Leonetti stated what the Board wants is a recommendation from Ms. Verstegen and Mr. Crawford that would address everyone's concerns. Dr. Leonetti stated he would not be in support of the motion at this time.

VOTE: Ms. Miles voted in favor of the motion; all remaining Board members voted no and the motion failed.

Dr. Kaplan stated he recommends that Ms. Verstegen confer with Mr. Crawford and report back to the Board to generate a process which will make this process easier for both the Board and the licensees. Dr. Kaplan asked if there was a motion as to tabling this case for now.

MOTION: Mr. Rhodes moved to table this case until the investigation process could be resolved. Dr. Leonetti seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. 09-19-C – Daniel Saunders, DPM: Declined invitation to informal interview and request for formal hearing.

Following the discussion regarding 09-09-M, the Board included case number 09-19-C in that vote as follows:

MOTION: Mr. Rhodes moved to table this case until the investigation process could be resolved. Dr. Leonetti seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

c. **09-34-C – J. David Brown, DPM: Declined invitation to informal interview and request for formal hearing.**

Following the discussion regarding 09-09-M, the Board included case number 09-34-C in that vote as follows:

MOTION: Mr. Rhodes moved to table this case until the investigation process could be resolved. Dr. Leonetti seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

d. **09-40-C – Jerome Cohn, DPM: Failure to diagnose Morton's neuroma; making false statements in a patient's medical chart.**

This case was tabled from the March 9, 2011 meeting for investigator Dr. Michael Kates to follow up with Dr. Cohn. The Board wanted to clarify directly with Dr. Cohn whether his documentation of the patient's office visit was accurate. Dr. Kates reported that he spoke with Dr. Cohn by phone who confirmed all information as stated in his written response to the complaint and that he dictated the patient's chart notes immediately following the office visit. Dr. Kates also pointed out that the patient stated in her complaint that she heard Dr. Cohn dictating her notes as she left the office.

MOTION: Dr. Leonetti moved to dismiss this case finding no violations. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

e. **09-47-C – Donald Curtis, DPM: Failure to properly diagnose soft tissue condition in patient's foot.**

Dr. Curtis was not present. Investigator Dr. William Leonetti was not present. Dr. Kaplan reviewed this case which involves patient K.B. The patient was referred by her primary care physician to Dr. Curtis for a soft-tissue mass on her left foot. Dr. Curtis reviewed diagnostic films provided by the primary care physician and concluded it was likely a tumor. He recommended surgical removal of the mass to which the patient agreed. On the third post-operative office visit the patient showed signs of a possible infection and Dr. Curtis cultured the surgical site. Pathology results indicated a venomous insect bite. The patient feels a culture should have been done prior to surgery and alleges that by not doing so Dr. Curtis failed to make a proper diagnosis.

In the investigative report Dr. William Leonetti concluded that Dr. Curtis provided appropriate care to this patient. The diagnostic films indicated an encapsulated soft tissue mass with high probability of a giant cell tumor which could not have been cultured without making an incision. The patient's primary care physician evaluated her and cleared her for surgery and was aware of Dr. Curtis's diagnosis. Dr. Leonetti finds there were no violations.

Upon review of the patient's records and diagnostic films, the Board agreed with Dr. Leonetti's findings. Dr. Kaplan stated he feels the care provided as documented in the patient's chart was appropriate. He added that not all soft tissue masses can be or need to be cultured.

MOTION: Ms. Miles moved to dismiss this case finding no violations. Dr. Campbell seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

f. **09-48-C – Andrew Lowy, DPM: Charging or collecting an excessive fee.**

Dr. Lowy was not present. Dr. Campbell recused herself as she was the investigator for this case. Dr. Campbell summarized the case as follows: Patient M.G. saw Dr. Lowy to obtain custom orthotics. Dr. Lowy's office requested pre-payment of \$450.00 in case the patient's insurance did not cover the orthotics. The patient paid that amount and was told he would be reimbursed when or if the

insurance made payment. The insurance did cover the orthotics but the patient had difficulties receiving reimbursement from Dr. Lowy's office.

Dr. Campbell reviewed the patient's chart and the billing records. She stated Dr. Lowy's office did eventually reimburse the patient but it took a long time because the office manager had been absent from the office. Dr. Lowy has now changed his office policies to ensure that this type of delay does not occur again in the future. Dr. Campbell also stated \$450.00 is not an excessive fee for custom orthotics. She finds no violations in this case. The Board members briefly discussed this case and agreed with Dr. Campbell's findings.

MOTION: Dr. Leonetti moved to dismiss this case finding no violations. Mr. Rhodes seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote with Dr. Campbell recused.

g. 10-02-C – Rajesh Daulat, DPM: Improper surgery; making false statement in a patient's medical chart.

This case was tabled from the March 9, 2011 Board meeting to obtain post-operative x-rays from Dr. Daulat and all diagnostic films from Dr. Mitchell who also treated the patient. Neither Dr. Daulat nor the complainant was present. Investigator Dr. Dedrie Polakof was present and summarized her findings as follows: She found no swelling and nothing out of the ordinary in the post-operative x-rays. She finds that the procedure performed by Dr. Daulat was done appropriately and she finds no violations.

The Board members reviewed all films. Dr. Leonetti noted that the patient complained that Dr. Daulat left a piece of metal in her foot (which was the anchor for the Achilles tendon); however, Dr. Mitchell used the same anchor in the procedure he did but the patient does not seem concerned by that. Dr. Kaplan stated in looking at the films that there are no soft tissue abnormalities. He feels the patient most likely had a reaction to the sutures that were used. Dr. Leonetti stated he feels the appropriate amount of bone was removed in Dr. Daulat's procedure and the anchor was placed well. He added that the second procedure which was done by Dr. Mitchell was done exactly the same way as the first procedure by Dr. Daulat. There may have been a complicated outcome but he finds no violations.

MOTION: Dr. Kaplan moved to dismiss this case finding no violations. Ms. Miles seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

h. 11-07-B – James Wilson, DPM: Failure to report criminal charges as required by A.R.S. §32-3208, misdemeanor conviction for assault, patient abandonment.

Ms. Penttinen reviewed this complaint which was generated by an anonymous caller who alleged Dr. Wilson had closed his office without notice and left town due to problems with criminal charges. The investigation found that on 01/21/2011 Dr. Wilson was arrested and charged with domestic violence / assault. Dr. Wilson did not report this charge to the Board as required under A.R.S. §32-3208. He was subsequently convicted via plea agreement of assault as a Class 1 Misdemeanor. Dr. Wilson also was Indicted on 03/10/2011 on one count each of public sexual indecency with a minor, a Class 5 Felony, and molesting a child, a Class 2 Felony. Dr. Wilson did not report the Indictment to the Board as required under A.R.S. §32-3208. In addition, Ms. Penttinen has received several calls from Dr. Wilson's patients stating his office is closed and they are not able to obtain their medical records in order to continue care with other physicians. Ms. Penttinen spoke by phone with the property owner of the building in which Dr. Wilson leased office space who confirmed that Dr. Wilson had abandoned his office with patients' charts still inside.

Dr. Kaplan stated he feels this is a very serious situation and he would like to consider whether a summary suspension would be warranted until a final decision can be made in this matter.

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

VOTE: The motion passed unanimously by voice vote and the Board went into Executive Session at 9:56 a.m.

The Board returned to Regular Session at 10:04: a.m.

MOTION: Dr. Kaplan stated he felt the public health, safety and welfare required emergency action and offered a motion in favor of a finding of public emergency and order of summary suspension of Dr. Wilson's license. The summary suspension would be enacted with a referral to a formal hearing through the Office of Administrative Hearings for the revocation of Dr. Wilson's license. Dr. Leonetti seconded the motion. Ms. Penttinen asked whether the Board would like to include in the motion delegating authority to her to execute the summary suspension so that it could be done that afternoon following the adjournment of the meeting. Drs. Kaplan and Leonetti agreed. There was no further discussion.

VOTE: The motion passed unanimously.

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

- a. 07-28-C – Kent Peterson, DPM: Monthly update.
Ms. Penttinen advised that Dr. Peterson had submitted records. Dr. Leonetti briefly reviewed them and noted there were no billing records or consent forms. Ms. Penttinen will obtain those from Dr. Peterson and forward to Dr. Leonetti for review. Dr. Leonetti will report back next month.
- b. 08-03-C – Elaine Shapiro, DPM: Monthly update.
Ms. Penttinen advised that the most recent progress report from Dr. Sucher was received in February 2011. The next report is due in May. She has not received any reports of non-compliance.
- c. 08-44-C – Alex Bui, DPM: Monthly update.
Ms. Penttinen advised that the Consent Agreement between Dr. Bui has been executed and became effective on March 28, 2011. Dr. Bui's first submission of records is due by April 15, 2011. Dr. Kaplan reviewed with the Board that this matter was previously referred to the Maricopa County Attorney's office. As the investigator for this case, Dr. Kaplan has called that office twice and left messages offering to assist them in sorting through the billing irregularities and violations the Board found; however, he has not received any call back. Ms. Verstegen advised that the Board could refer this case elsewhere for follow-up such as the Office of the Attorney General which has a new division for healthcare fraud.

MOTION: Dr. Leonetti moved to refer this matter to the Office of the Attorney General for their review. Mr. Rhodes seconded the motion.

VOTE: The motion passed unanimously by voice vote with Dr. Kaplan recused.

- d. 09-13-M – Patrick Farrell, DPM: Monthly update.
Ms. Penttinen advised that Dr. Farrell had submitted records for two procedures. Dr. Leonetti will review those records and report back to the Board next month.
- e. 09-17-B – J. David Brown, DPM: Monthly update.
The Board reviewed the progress report received from Dr. Sucher which indicates Dr. Brown is in compliance with all monitoring requirements.

VI. Review, Discussion and Possible Action on Administrative Matters

- a. Request from Dr. Elaine Shapiro to amend the minutes of the February 9, 2001 Board meeting.
The Board received a request from Dr. Shapiro to amend the minutes to reflect that she has not regained privileges at Northwest Hospital. When she was interviewed by the Board on February 9

and discussed her current hospital privileges she was referring the Carondelet St. Mary's Hospital. It appears there was a misunderstanding when this was discussed during the February 9 meeting. Ms. Penttinen advised she had also received a letter from the CEO of Northwest Hospital advising the Board that Dr. Shapiro had not been reinstated at that facility. Ms. Penttinen has already sent a response to Northwest assuring that Dr. Shapiro did not provide the Board with any false information and that the Board would be addressing this matter based on Dr. Shapiro's request.

MOTION: Ms. Miles moved to amend the February 9, 2011 Board meeting minutes as requested by Dr. Shapiro. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

- b. Request from University of Arizona Southern Arizona Limb Salvage Alliance to allow a late license application for an applicant to sit for the June 8, 2011 oral examination. The Board is in receipt of a request from Dr. David Armstrong at the University of Arizona Medical Center's S.A.L.S.A. program. On April 11, 2011 that program approved a second fellowship position and Dr. Armstrong is asking the Board to allow his fellowship candidate permission to sit for the oral license exam on June 8, 2011 although the application deadline has already passed. Dr. Leonetti noted that this is the third year Dr. Armstrong has made a similar request. In the past the primary fellowship candidate was not selected by S.A.L.S.A. until after the application deadline. This year they moved up their selection date, but this is now a secondary fellowship position and it does require an active Arizona license.

The Board reviewed the applicable statute which states the application deadline is 90 days prior to the oral exam date, and the statute which states the exams may be given twice per year in June and December. There was lengthy discussion among the Board members and Ms. Penttinen regarding this application and any potential future requests in the future. Dr. Leonetti stated the S.A.L.S.A. program is an important program which has a very beneficial impact on care and treatment of patients with circulatory and other foot problems, especially involving diabetes. The Board agreed that the greater good of the public health warrants allowing Dr. Armstrong's second fellowship candidate to apply at this time and be allowed to sit for the next oral exam. Ms. Penttinen will notify Dr. Armstrong as soon as possible so that his fellowship candidate can begin the license application process immediately.

- c. New License application(s):
i. Jacob Jones, DPM

The Board members reviewed the complete application file for Dr. Jones.

MOTION: Dr. Kaplan moved to approve Dr. Jones' license application and allow him to sit for the oral exam on June 8, 2011 pending receipt of the results of his PMLexis exam. Dr. Leonetti seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

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

- a. Open complaint status report.
Ms. Penttinen reviewed with the Board the report which indicates there are currently 62 open complaints. This includes the matters on today's agenda and those that have been referred to formal hearing.
- b. Update on budget status and proposed sweeps of Board cash.
Ms. Penttinen advised that a final budget has not been passed yet in the Legislature.
- c. Malpractice case report.
i. Paul Ledesma, DPM. PICA report of a claim filed by patient M.B. (Not previously investigated by the Board.)

The Board reviewed the PICA report and noted that the claimant/patient lives in Massachusetts. It is likely that this incident occurred in that state. The Board directed Ms. Penttinen to find out where the incident occurred. If it was in Arizona, a complaint file will be opened; if it was in Massachusetts, the Board will review it when / if there is a settlement or judgment made against Dr. Ledesma.

d. Legislative report.

i. SB 1044: Continuation bill.

ii. SB 1315: Statute changes.

Agenda items VIII(d)(i)&(ii) were review simultaneously. Ms. Penttinen advised that SB1044 passed the final vote in the House of Representatives by a vote of 37 to 21. She added that many healthcare bills in the House passed by very similar margins so it is not a reflection on the Board or the podiatry profession. Ms. Penttinen also advised that SB1315 passed in the House with a final vote of 58 to 1, so many of the representatives who voted against continuing the agency later voted in favor of the proposed statute changes. Both bills are awaiting the approval of the Governor and will go into effect on the general effective date following the end of the present legislative session.

VIII. Call To The Public

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

IX. Next Board Meeting Date:

a. May 11, 2011 at 8:30 a.m.

X. Adjournment

MOTION: Dr. Kaplan moved to adjourn the meeting. Dr. Campbell seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.