



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

August 10, 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: Seth Hargraves

I. Call to Order

Dr. Kaplan called the meeting to order at 8:30 a.m.

II. Roll Call

Dr. Kaplan noted for the record that all Board members were present, as well as Ms. Penttinen and Assistant Attorney General Seth Hargraves.

III. Approval of Minutes

a. July 22, 2011 Teleconference Regular Session Minutes.

Mr. Hargraves noted a typographical error on page one of the minutes. He also stated that the minutes should be amended to reflect the specific order in which the agenda items were discussed and acted upon by the Board. The agenda items had not been reviewed and acted upon in the specific order in which they appeared on the agenda; however, none had been marked as time-specific items. Ms. Miles stated that she did not agree with Mr. Hargraves' suggestion and asked whether there was a legal significance or precedent which required the minutes to reflect the chronological order in which the agenda items were reviewed by the Board. Mr. Hargraves stated that according to statute, the minutes must accurately reflect what occurred in the meeting, which he deems to include the actual order in which the agenda items were reviewed and acted upon. He stated that if the minutes did not capture the chronological order of events then they did not accurately reflect what occurred at the meeting.

Dr. Leonetti addressed Mr. Hargraves to confirm that his suggested changes would only change the order in which the agenda items appear in the minutes but that the actual content of the minutes for each item was accurate. Ms. Penttinen offered that such formatting would be challenging and added that the Auditor General's office has been present in the Board's meetings and reviewed the corresponding minutes and found no issues with the minutes being produced in the current format. Dr. Kaplan stated that he did not see any problem with the minutes as currently drafted.

MOTION: Ms. Miles moved to approve the minutes with correction of the typographical error as noted. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Following the vote, Dr. Kaplan asked whether the Board could discuss what would happen in the future if a physician whose license has been revoked can re-apply for a license in the future in relation to Dr. James Wilson. Mr. Hargraves stated that the Board could discuss the minutes related to the specific agenda item, which in this case was Dr. Wilson's revocation only, but a general discussion about licensees being allowed to re-apply would have to be specifically stated on the agenda. Dr. Leonetti

suggested that the general topic be placed on the agenda for the September Board meeting. Ms. Miles asked to clarify whether the specific case of Dr. Wilson's revocation should be agendized, or just the matter of future re-application. Drs. Leonetti and Kaplan stated the discussion would be the general matter of re-application for licensees who have been revoked.

IV. Review, Discussion and Possible Action –Review of Complaints (NOTE: The subject matter listed for each agenda item represents the allegation(s) being investigated. The presence of allegations does not automatically indicate violation of Statute or Rule in connection with the practice of podiatry.)

a. 09-41-C – Mark Brekke, DPM: Refusal to perform surgery.

Dr. Brekke was not present. Dr. Campbell recused herself as she was the physician investigator for this case. Dr. Campbell reviewed the case as follows: The complainant M.W. alleges: she had surgery with Dr. Brekke on 02/19/09 to correct a bunion on her left great toe. Following surgery the toe did not heal correctly and she sought a second opinion from another physician who advised against another surgery. However, the patient wanted the second surgery which Dr. Brekke refused to perform.

Dr. Brekke's refusal was based on what he stated was the patient's non-compliance with post-operative instructions following the first surgery in relation to her level of physical activity. He also felt the patient had personal circumstances which were interfering with the patient's self-care. Specifically, the patient's roommate / boyfriend was very involved, in a negative way, with the patient's care and was difficult for Dr. Brekke and his staff to work with. The patient also had a long history of smoking which creates complications with post-operative healing.

Dr. Kaplan asked Dr. Campbell what her recommendations were. Dr. Campbell stated she believed Dr. Brekke was genuinely concerned with the patient's well-being and her ability to heal properly given all circumstances, including non-compliance with post-operative instruction and the patient's roommate encouraging her to engaged in physical activity contrary to those instructions. Dr. Kaplan stated that, in general, there may be a concern if a physician performs one surgery on a patient and then refuses further surgery or care; however, doctors do have the right to op-out of procedures they do not want to perform for a number of reasons. Dr. Leonetti stated he agrees and believes that in this case Dr. Brekke was acting in the best interest of the patient. He stated he feels that Dr. Brekke not performing an additional procedure on this patient at that time was the right thing to do.

MOTION: Dr. Kaplan moved to dismiss the complaint finding no violations. Mr. Rhodes seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. 10-08-C – Paul Woodward, DPM: Charging or collecting an excessive fee.

Dr. Kaplan recused himself as he was the physician investigator for this matter. Dr. Leonetti served as acting president. Dr. Woodward was not present. Dr. Kaplan reviewed the case as follows: Patient A.M. arranged a house call with Dr. Woodward to address her foot care. The patient's primary care physician requested a diabetic foot care consultation as the patient was homebound. The patient was upset because the charge for Dr. Woodward's services was \$75.00 because Dr. Woodward was not contracted with her insurance. Prior to services being performed, the patient was informed of the fee and that Dr. Woodward was not on her insurance plan and she chose to go forward with treatment. However, the patient believed Dr. Woodward would be addressing all of her diabetes-related foot care comprehensively, even though the patient's primary care physician was already addressing the diabetes-related issues. Dr. Kaplan feels there was no problem with the services provided, which included nail care, or the fees charged for that care.

Dr. Leonetti asked whether Dr. Woodward made any recommendations to the patient's primary care physician in regard to treatment that the patient should receive in relation to her diabetes and foot care. Dr. Kaplan stated he had spoken with Dr. Woodward who said he found no ulcerations on the patient's feet. He added that the primary care physician was already aware of, and was addressing, the patient's leg problems including edema so Dr. Woodward's care was limited to nail care. Dr. Kaplan stated the patient is housebound and on a fixed income, so she is not happy with the fee charged; however the patient was aware of the treatment that Dr. Woodward would provide and agreed to receive that care. He stated it was unfortunate that the patient was under the wrong impression, but Dr. Woodward did provide the service requested and Dr. Kaplan does not find the fees to be excessive.

MOTION: Dr. Leonetti moved to dismiss the case finding no violations. Dr. Campbell seconded the motion. Mr. Rhodes noted that Dr. Woodward also incurred travel time and travel expenses so he does not feel the fee was excessive. There was no further discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

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

Dr. Leonetti reported that Dr. Peterson appears to be in compliance with his probation, although there seems to be a question regarding his use of billing codes for nail avulsions and incise-and-drain-type of procedures (I&D). He stated that the Board's consultant, (Dr. Dedrie Polakof) was consulted and indicated that an injectable anesthetic is required to use the billing code 11730; however, Dr. Peterson is using topical anesthetic. Dr. Leonetti feels a letter could be sent asking Dr. Peterson to explain his procedures and related billing, or he could be requested to appear at a Board meeting to discuss this directly with the Board. Dr. Leonetti stated he was concerned that Dr. Peterson is on probation for billing related to recurrent I&D procedures without accurately documenting the procedures, and now it appears Dr. Peterson is doing the same thing but with a different billing code.

There was discussion as to whether other insurance providers follow the Medicare guidelines regarding the use of topical vs. injectable anesthetic when using the code 11730. Dr. Leonetti stated he believes that is the often the case but every insurance company can be different. Dr. Leonetti added another concern that the same patients are being seen repeatedly for nail avulsions, some every two months. He feels that if the same avulsion procedure is not working then a more permanent procedure should be considered, and stated the number of nail avulsion procedures Dr. Peterson is doing appears to be excessive.

Dr. Kaplan stated he would like to have Dr. Peterson come to a Board meeting to discuss his billing procedures and whether the patient's charts are consistent with the billing. The Board discussed Dr. Peterson's settlement with Medicare to repay overpayments made to him. Dr. Leonetti stated he thinks Dr. Peterson's documentation is improved but he is concerned about the possibility that Dr. Peterson's documentation may be inaccurate and done to support the intended billing. Dr. Leonetti also noted that Dr. Peterson has not been submitting any actual billing documents (such as EOB's) but has noted in the patient chart what code to bill. Ms. Penttinen will contact Dr. Peterson to have him send all billing documentation for charts submitted up to this point and advised him to send those in the future.

MOTION: Dr. Leonetti moved to request Dr. Peterson to appear at the October Board meeting to specifically discuss his billing for code 11730 and the corresponding patient charts. Dr. Peterson will be requested to send all billing documentation for charts submitted up to this point and advised to send them for all charts submitted in the future. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

Dr. Kaplan reviewed the progress report from Dr. Sucher which indicates Dr. Shapiro is in compliance with all monitoring requirements.

c. 08-44-C – Alex Bui, DPM: Monthly update.

Dr. Kaplan noted that Dr. Bui sent a letter advising that he had no billing in Month of July for durable medical equipment. Ms. Penttinen reviewed the report of the inspection she conducted at Dr. Bui's office on July 26, 2011 which was the last day of Dr. Bui's suspension. Dr. Bui was present and allowed Ms. Penttinen access to his office. There were no other persons in the office at the time of her inspection and no signs of patient care being given. In aggregate with the previous inspections it appears that Dr. Bui was not practicing at all during his suspension period.

The Board also reviewed the CME information provided by Dr. Bui. Dr. Kaplan stated there are still questions about the content of all the courses, especially the ones related to billing in a hospital setting. Ms. Penttinen advised that she had requested Dr. Bui send additional information about the content of

the CME courses he is proposing to take. During her inspection on July 26, Dr. Bui explained to her that in the past he was frequently called over to West Valley Hospital for consultations. However, he also stated he rarely does such consultations anymore and does not plan to do any in the future.

Dr. Kaplan stated he is uncertain why a podiatrist would be called to consult at a hospital unless they are called by a hospitalist which is rare. He also has questions remaining about the credentials of "E/M University." Both Dr. Kaplan and Ms. Miles stated they do not have enough information at this time about "E/M University" to approve. Ms. Miles added that information is needed regarding "Dr. Jenkins" who is the operator of "E/M University." Ms. Penttinen added that she requested Dr. Bui to provide additional information about Dr. Jenkins but he has not done so. There was general discussion that Dr. Bui must provide independent documentation, such as website information or screenshots, or course pamphlets or brochures listing the content and objectives of the proposed courses. He also must provide information regarding the credentials of Dr. Jensen which can be independently verified. Ms. Miles asked to review the specific billing codes for which Dr. Bui was found to be in violation and it was confirmed that they related to durable medical equipment. Ms. Miles stated she would not be willing to approve the seven courses related to billing in a hospital setting. Dr. Leonetti stated that most podiatry CME on billing will include proper coding for durable medical equipment. The Board suggested that Dr. Bui should contact the ACFAS to locate more appropriate CME courses. Dr. Bui also will need to provide more information about "E/M University" and "Dr. Jensen."

d. 09-13-M – Patrick Farrell, DPM: Monthly update.

Ms. Penttinen advised that a letter had been received from Dr. Farrell requesting that his probation be terminated. His probation was for one (1) year starting on September 8, 2010. Dr. Leonetti reported that he has reviewed all records submitted by Dr. Farrell during the probation and he has been compliant with the terms of his probation and proper billing procedures and documentation. Dr. Leonetti stated he has no concerns regarding terminating Dr. Farrell's probation.

MOTION: Dr. Leonetti moved to terminate Dr. Farrell's probation. Ms. Miles seconded the motion.

DISCUSSION: Mr. Hargraves questioned whether the Board was able to vote on Dr. Farrell's request to terminate his probation because that part of his probation was not specifically listed on the agenda; it was listed as "monthly update." Dr. Leonetti asked whether it need to be specifically listed because he was under the impression that "monthly update" would include any matters related to the term of probation and would be open for discussion. Mr. Hargraves stated that the agenda does not indicate that there will be consideration of termination of a public order, and he questioned if action to terminate the probation was properly noticed to the public in the agenda. Dr. Kaplan stated that he thought it was up to the Board to determine what action to take during a monthly probation update and review. Dr. Leonetti proposed that a probation review may uncover violations and asked if the Board would be unable to take action in that situation. Mr. Hargraves stated that with any action taken there must be notice of the action. Ms. Miles stated she did not believe it would be an "action" to open a new investigation case based on a probation violation. Dr. Kaplan stated the action to be taken is the monthly probation review and he believes a request to terminate the probation would be considered part of that monthly update. Dr. Kaplan clarified that the motion on the table is to terminate Dr. Farrell's probation. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

Dr. Kaplan reviewed the progress report from Dr. Sucher which indicates Dr. Brown is in compliance with all monitoring requirements. Ms. Penttinen added that the last report should have been received in July but it was late. However, both Dr. Shapiro's and Dr. Brown's progress reports will be due in the same month which will be easier to track.

VI. Review, Discussion and Possible Action on Administrative Matters

a. Request from Bruce Crawford to review the Board's investigation procedures with regard to providing a copy of the investigation report to the licensee prior to the Board's initial review.

Dr. Kaplan stated his recollection of the previous discussion and decision by the Board was that the licensee would be sent a copy of the investigation report at the same time it is sent to the Board

members; however, it now appears that Mr. Crawford wants to receive the reports further in advance. Ms. Penttinen reviewed that Mr. Crawford's previous discussion with the Board centered on simply receiving a copy of the report ahead of time so there were not any feelings with the licensees that they would be blindsided at the Board meeting. There also had been discussion about "re-noticing" the licensee if additional problems are discovered during the investigation and allegations are going to be added. Those procedures are now in place. When the last few cases for which Mr. Crawford was representing the licensee were placed on a meeting agenda, Mr. Crawford requested the reports and was told they would be sent at the same time they are sent to the Board members which is one to two weeks ahead of time.

Ms. Penttinen reported that Mr. Crawford has now stated that he does not have enough time to meet with his clients after receiving the reports to decide if they want to attend the Board meeting based on the content of the reports. She discussed this with Mr. Crawford via email as this was not his original concern. If he knows that an investigation report will be sent a week prior to the Board meeting, he can schedule a meeting with his client ahead of time for sometime within that week prior to the Board. Ms. Penttinen also had advised Mr. Crawford that it appears he will base his decision on whether or not to have his clients attend the meeting on whether the investigator found the complaint to be substantiated, thereby delaying potential disciplinary action as long as possible.

Dr. Leonetti stated he initially thought it would be a good idea to share the investigation reports with the licensees prior to the Board meetings, but he has now changed his mind and he does not like the current events on this subject. He stated the Board essentially extended an olive branch to Mr. Crawford who was using stall techniques by advising his clients not to appear before the Board. The Board decided to provide the reports in an effort to expedite the review process. Dr. Leonetti recommended returning to the Board's previous process of not providing the reports to the licensees. He said first Mr. Crawford wanted the reports, and now he wants them sooner. Soon Mr. Crawford will want to make change and comments on the reports and the Board will never be able to satisfy him.

Dr. Kaplan stated he agreed, and there was discussion with Ms. Penttinen regarding the "re-notice" process. It was confirmed that the licensee will have been made aware of any additional allegations well before the Board meeting and that information will be incorporated into the investigation report. Dr. Kaplan stated that if the Board returned to the previous process, no licensees will attend and everything would end up having to go to a formal hearing. Ms. Miles feels it is appropriate to maintain the current process and stated that the licensee can choose whether or not to attend the Board meeting for the initial review. By giving them the report then they are not being blindsided and it removes any appearances of secrecy regarding the investigation. Ms. Miles added that it does not harm the Board to provide the reports to the licensees under the current process. Ms. Penttinen clarified that Mr. Crawford is now aware of when he can expect to receive the reports and he can schedule a meeting with his clients in advance, not wait to have the document in hand before trying to schedule a meeting. Ms. Miles stated that Mr. Crawford's scheduling issues should not be cause to change how the Board functions.

Dr. Kaplan stated he likes the re-notice process. Dr. Leonetti confirmed that the licensee, and their attorney if they have one, are going to be aware of all the allegations prior to the Board meeting, and had the opportunity to respond. He does not feel the licensees should feel blindsided, they just need to be prepared to discuss what they are already aware of regarding the case. Ms. Miles added that it is fair for the Board to allow the licensee to see the opinion and findings of the investigator. She added that she understands he is advocating for his clients but she is not in favor of making any changes to the process. All Board members agreed that the current process will remain the same. Licensees, or their attorneys, will be sent a copy of the investigation report at the same time the reports are provided to the Board members.

b. CME approval request from Derek Hunchak, DPM.

Dr. Hunchak submitted a CME approval request for the Advancements in Foot and Ankle Surgery Seminar in September of this year. The presenter is the Orange County, California Podiatric Medical Association. Dr. Hunchak is requesting 10 hours of CME. The Board reviewed the seminar content information.

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

VOTE: The motion passed unanimously by voice vote.

c. Review of new license application(s)

i. Ryan Mackey, DPM

The Board reviewed the new license application file for Dr. Mackey and determined that there were no substantive deficiencies.

MOTION: Dr. Leonetti moved to approve Dr. Mackey to sit for the oral examination. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

d. License renewal applications: The Board will review, discuss and take action to approve, deny, or issue a deficiency notice for the following physicians' license renewal applications and/or dispensing registrations:

Gary Almas
Steven Axt
Mark Barinque
David Bates
Carl Beecroft
Rodney Berkey
David Berman
M. Benjamin-Swonger
Kenneth Blocher
Steven Burns
Robert Chiarello
Luke Cicchinelli
Douglas Cohen
Dean Clement
Jerome Cohn
David Corcoran
Laureen Cota

Scott Crampton
Kelvin Crezee
Rajesh Daulat
Michael Esber
Michael Farkas
Patrick Farrell
Michael Fox
Lewis Freed
Daniel Fulmer
Todd Gunzy
Travis Jensen
Gail Johnson
Jeffrey Kleis
Jay Larson
Bjorn Lawson
David Lee
Mary Maselli

Lois Miller
Hartley Miltchin
Stefan Mudryj
Craig Murad
Robin Myers
Brian Neerings
Lisa Pallini
Kent Peterson
J. Barton Ripperger
Daniel Schulman
Kendall Shumway
Terence Thompson
Tanya Thoms
Arnold Wolf
Serrina Yozsa

The Board noted a substantive deficiency for Dr. Miltchin. Ms. Penttinen will contact Dr. Miltchin to resolve the issue.

MOTION: Dr. Kaplan moved to approve all license renewals except Dr. Miltchin. Ms. Miles 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 advised that she is still working on repairing the database and updating the complaint information in order to run the customary report. She provided a typed list indicating there are currently 57 open complaints.

b. Lawsuit filed against the Board by Steve Montes.

All Board members have a copy of the legal complaint filed by Mr. Montes. Ms. Penttinen stated she has received an update from attorney Paul Correa who will be representing the Board in this matter. He works in the Attorney General's Office in Tucson in the Liability Management Section. The update from Mr. Correa states the current plan of litigation is to file a motion to dismiss the case and he will keep us updated. Several of the other defendants named in the case also have filed motions to dismiss. Apparently Mr. Montes has filed for a restraining order but it is unknown who that order would be against, but the Board has not been served with any such order.

Dr. Kaplan asked if Dr. Elaine Shapiro had been served because she is named in the lawsuit. Ms. Penttinen stated she does not know and has not spoken with Dr. Shapiro. Dr. Leonetti asked what this case was about. Ms. Penttinen explained that there were some recordings in the Board's minutes from the late 1980's and early 90's relating to Mr. Montes. Based on those minutes it appears that during that time he was operating a company called Montes Orthopedics. He was making custom orthotics which involved his evaluating "patients," creating the orthotics and fitting them to the patients, which was

deemed by the Board to be “practicing” podiatry. The Attorney General’s Office sent “cease and desist” letters to Mr. Montes which Mr. Montes claims that by doing so, the Board ran him out of business and close five offices in Tucson. Mr. Montes’ legal complaint names dozens of defendants and includes a variety of alleged illegal actions spanning 37 years. Ms. Penttinen believes Mr. Correa’s motion to dismiss will be based on the statute of limitations. Ms. Miles suggested the prior to discussing any strategy or actions to be made on the Board’s behalf by their legal counsel the Board should go into Executive Session.

MOTION: Ms. Miles moved to go into Executive Session for the purpose of obtaining legal advice and discussing pending litigation. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote and the Board went into Executive Session at 9:45 a.m.

The Board returned to Regular Session at 9:48 a.m. Nothing further was discussed on this matter.

c. Malpractice case report.

i. Edward Kelly, DPM. PICA report of claim filed on 05/23/2011 by patient R.W.

The Board members reviewed the report which indicates that only a claim has been filed but there has been no settlement or judgment. Dr. Kaplan stated he did not feel an investigation file needed to be opened. All other Board members were in agreement. Ms. Penttinen stated she will place the report in Dr. Kelly’s license file.

VIII. Call To The Public

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

IX. Next Board Meeting Date:

a. September 14, 2011 at 8:30 a.m.

X. Adjournment

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

VOTE: The motion passed unanimously by voice vote and the meeting was adjourned at 10:25 a.m.