



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

December 11, 2013; 8:00 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
M. Elizabeth Miles, Secretary-Treasurer
John Rhodes, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: John Tellier

I. Call to Order

Dr. Kaplan called the meeting to order at 8:13 a.m.

II. Roll Call

Dr. Kaplan, Dr. Campbell, Mr. Rhodes and Ms. Penttinen were present. Dr. Leonetti, Ms. Miles and Mr. Tellier were not present.

III. Administration of Oral License Exams.

MOTION: Dr. Kaplan moved to go into Executive Session for the purpose of administering the confidential oral licensing exams. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed by voice vote and the Board adjourned into Executive Session at 8:14 a.m.

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|-------------------------|-----------------------|
| a. John Cox, DPM | g. Kelly Pirozzi, DPM |
| b. Eugene DeLaCruz, DPM | h. Nima Sana, DPM |
| c. Dustin Doyle, DPM | i. Joseph Vella, DPM |
| d. Melissa Galli, DPM | j. Holly West, DPM |
| e. Mikkel Jarman, DPM | k. Joanna Wyman, DPM |
| f. Patricia Kirk, DPM | |

The Board returned to Regular Session at 8:48 a.m. at which time Dr. Leonetti, Ms. Miles and Mr. Tellier were present.

IV. Approval of Minutes

a. November 13, 2013 Regular Session Minutes.

Review of the November 13, 2013 Regular Session minutes was deferred to the January 2014 meeting.

b. November 13, 2013 Executive Session Minutes.

MOTION: Ms. Miles moved to approve the minutes as drafted. Dr. Kaplan seconded the motion.

DISCUSSION; Mr. Tellier advised that he had spoken with AAG Marc Harris who reviewed the minutes and agreed with the content.

VOTE: The motion passed unanimously by voice vote.

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

a. 09-27-M – Maria Buitrago, DPM: Case status review and possible disposition / closure of case.

Ms. Penttinen explained that this case was prompted by an incident which occurred in Texas. When it was initially reported to this agency the Board voted to defer action pending the outcome of any action taken by the Texas Podiatry Board. Ms. Penttinen has now confirmed that the claim was withdrawn by the patient before Dr. Buitrago was served. The Texas board reviewed the case and determined not to take any action.

MOTION: Dr. Kaplan moved to dismiss this case. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. 12-02-C – Barbara Aung, DPM: Billing for services not rendered.

Dr. Aung was not present. Dr. Mark Forman was the investigator for this case and was present. Dr. Forman provided the following summary: The patient came to dr. Aung for orthotics and was casted for a Richie Brace. The patient's mother wanted a second brace for the second foot but Dr. Aung wanted to see how the first one worked before doing the second foot. She billed 99212 with a diagnosis of "pain." The copay for that office visit was never paid. Dr. Aung billed for the copay two years later but ended up dropping it. Dr. Forman does not believe there is any violation based on the complaint information. However, Dr. Aung was not able to produce the note for that specific office visit due to computer issues switching to electronic medical records.

Dr. Leonetti stated he was not concerned regarding assessing the first Richie Brace before casting for the second one. However, there is a problem with why the patient's complete records could not be produced. Dr. Forman stated that Dr. Aung advised him she has someone working on the problem and expects it to be fixed. Dr. Forman also confirmed that this issue was just for a small time period in 2008 and Dr. Aung's EMR system can print notes from after that time. Dr. Kaplan questioned how Dr. Aung was able to access some records, such as the superbill, EOB and intake forms, but not the complete chart. He also questioned how Dr. Aung could remember all the information she provided if she could not access the notes. Dr. Leonetti stated Dr. Aung's EMR system could be constructed such that only the dictated notes are stored there any everything else is in hard copy in the chart. He also questioned whether Dr. Aung could read the records just not print them. Dr. Forman confirmed for Dr. Kaplan that, based on the information provided by Dr. Aung, x-rays were not taken. Dr. Leonetti noted that the financial responsibility form in the chart is for orthotics, not Richie Braces. Dr. Campbell asked if the patient was referred by a pediatrician or other doctor who may have a consultation report from Dr. Aung. Dr. Forman stated that was unknown but it could be part of the EMR which could not be accessed.

Dr. Leonetti stated that if there were questions regarding any possible violations this case could be tabled to gather additional information. There may be a problem if the records cannot be produced because podiatrists are required to keep them for seven years whether they use an EMR system or not. Dr. Kaplan agreed and stated x-rays should be available because the need for Richie Braces cannot be determined without taking x-rays. Dr. Forman reviewed the chart which indicated an initial diagnosis of severe pronation in both ankles with flat feet. Dr. Leonetti suggested that Dr. Aung be requested to appear before the Board to discuss this case and that she be asked to produce the entire chart including x-rays prior to that appearance. The Board members were in agreement to table this case for further investigation to obtain the complete chart and ask Dr. Aung to appear. Dr. Campbell also suggested finding out if there was a referring physician who may have a consultation note and also who the other physician was who told the patient's mother that the Richie Braces were not needed. All Board members were in agreement.

c. 12-18-C – Michael Sekosky, DPM: Improper wound management; improper billing due to excessive and/or unnecessary office visits.

Dr. Sekosky was not present, nor was his attorney Bruce Crawford. Dr. Jerome Cohn was the investigator for this case and was present. Dr. Cohn provided the following summary: Dr. Sekosky initially saw the patient in October 2007 and was seen multiple times for wound care and ulcers of the feet related to his diabetes. There were concerns about his vascular status. Dr. Sekosky recommended

x-rays and vascular studies multiple times which the patient continually refused. In 2009 the patient was again seen for ulcerations of the feet and the doctor recommended inserts. The patient refused any treatment other than wound debridement. In November 2011 the patient presented with two ulcers of the right foot in the navicular region. Dr. Sekosky prescribed antibiotics and wound care. Two additional debridements were done that month. In December Dr. Sekosky suggested sending the patient to a wound clinic and completed other diagnostic studies which the patient again refused. In January 2012 ulcerations were still present on the right foot. The patient agreed to try some type of biomechanical support and it was decided to try custom orthotics. The patient was casted and orthotics dispensed but the patient seemed to have problems adjusting to them. There was documentation in the chart that they patient may not have been following the instructions for use of the orthotics. The patient eventually went to Dr. Scott Maling who he allowed to take x-rays and perform other diagnostic studies. Dr. Maling ended up performing surgery in December 2012 which was an exostectomy.

Dr. Forman concluded that he did not find either of the allegations to be supported. He feels the treatment provided by Dr. Sekosky was within the standard of care particularly since the patient refused many evaluation and treatment options for several years. He feels the patient's chart is well documented and that there were no unnecessary office visits. He feels the patient may have had better outcomes more quickly if he had been open to the suggestions made by Dr. Sekosky. Dr. Leonetti stated he agreed with Dr. Forman's conclusions.

MOTION: Dr. Leonetti moved to dismiss the case finding no violations. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

d. 13-06-C – Barbara Aung, DPM: Improper care due to indicating use of orthotics that did not provide relief; improper billing due to charging for services that did not provide relief of symptoms.

Dr. Aung was not present. Dr. Forman was the investigator for the case and was present. Dr. Forman provided the following summary: the patient saw Dr. Aung in October 2012 to get new custom orthotics. The patient had old orthotics which Dr. Aung inspected and determined needed to be replaced. She gave the patient a pair of over-the-counter orthotics to use while the custom ones were produced. The patient signed a financial responsibility / consent form and paid for the orthotics. When the new orthotics came in they were dispensed to the patient with break-in instructions. The patient returned five days later complaining of knee pain. Dr. Aung told her to decrease the time wearing them, then gradually increase. Two weeks later the patient returned complaining of knee pain at 9/10 and also back and hip pain. Dr. Aung noted the patient's shoes were very old and recommended replacing them. She also sent the orthotics back to the lab for adjustment. In December the patient returned to Dr. Aung complaining of increased knee pain and being unable to work. Dr. Aung sent the orthotics back to the lab again with the patient's original old orthotics to have a new pair made just like the old ones. She also referred the patient to physical therapy, gave her a prescription for anti-inflammatory medication, and advised her to use ice therapy. The patient returned in January 2013 and was upset that the new orthotics were taking too long to come in. Dr. Aung told her the lab may have been backed up over the holidays and she would call to check the status. She also gave the patient a prescription for Tylenol 3. Ten days later the patient returned to the office and reported being pain free. She had been doing physical therapy and had not filed the Tylenol prescription. The new orthotics were dispensed with break-in instructions. Less than one month later the patient returned complaining of increased knee pain and told Dr. Aung that her orthopedist said the orthotics were too hard. She requested her money back and Dr. Aung refunded the cost of the orthotics but not the casting fee. The physical therapy notes indicate that the patient's knee pain improved slowly but steadily during the time she was being treated by Dr. Aung. The patient also saw Dr. Amram Dahukey starting in August 2013 and had an initial pain rating of 2/10. She wanted new orthotics and was complaining of plantar fasciitis bilaterally. Dr. Dahukey casted her for new orthotics and one week later took x-rays. He suggested waiting to see how the orthotics worked before trying any other treatment options. The orthotics were dispensed in October 2013 and there were no further notes.

Dr. Forman continued: He finds allegation #1 is not supported. Sometimes orthotics do not relieve all symptoms and Dr. Aung made several attempts to correct them to the patient's satisfaction. Dr. Forman finds allegation #2 also is not supported. Dr. Aung did refund the cost of the orthotics, even though her consent form states that no refunds will be given. She did not refund the cost for casting the patient's feet, but that is a service which she did perform. Dr. Leonetti stated he agrees; for one reason or another custom orthotics do not always help but Dr. Aung made appropriate attempts to modify them to improve their function for the patient. Dr. Forman confirmed for Dr. Kaplan that Dr. Aung did not take any x-rays on this patient but Dr. Dahukey did. (Dr. Dahukey did not submit copies of those x-rays.) Dr. Campbell agreed with the findings and stated that the patient had pain in other areas of the body which would not be caused by or relieved by orthotics.

Ms. Miles reviewed that the patient also had mentioned in her complaint that she had requested copies of her medical records from Dr. Aung and as of the date of her complaint she had not received them. Ms. Penttinen confirmed for the Board members that when she interviewed the patient the only concerns discussed were the two allegations stated in the investigation report. Dr. Leonetti suggested that the patient could be contacted to determine if she received copies of her records.

MOTION: Dr. Kaplan moved, for the purpose of discussion, to dismiss the case finding no violations. Mr. Rhodes seconded the motion.

DISCUSSION: Dr. Leonetti stated that the patient initially did have an issues with not receiving her records or them not being provided to her in the way she thought they should have been; it was important enough for her to include in her complaint but it may have been resolved by the time she spoke with Ms. Penttinen. Dr. Leonetti feels some follow-up is warranted. Dr. Campbell stated she agrees, particularly in light of recent problems caused by transitions to EMR systems. Dr. Kaplan withdrew his motion and Mr. Rhodes withdrew his second.

Dr. Leonetti suggested tabling this case and have the investigator contact both the patient and Dr. Aung to determine if/when the records were provided to the patient. All Board members were in agreement. Dr. Forman will follow up with the patient and Dr. Aung.

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

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

Ms. Penttinen advised that the last progress report from Dr. Sucher was received in November so the next report is due in February 2014. She has not received any reports of non-compliance.

b. 11-09-M – Kelvin Crezee, DPM: Monthly update.

Ms. Penttinen advised that she has not received any documentation from Dr. Crezee to indicate that he has completed the training class that he is required to teach under his consent agreement. He is still within the time frame specified in the agreement.

c. 13-05-B – Kathleen Stone, DPM: Monthly update.

Ms. Penttinen reviewed the invoice received from Dr. Stone indicating that she is continuing with counseling as required by her consent agreement. She confirmed for Dr. Kaplan that Dr. Stone's probation period is two years, but the counseling requirement is only for as long as deemed necessary by the counselor whether that precedes or exceeds the end of her probation.

VII. Review, Discussion and Possible Action on Administrative Matters.

a. Kathleen Stone, DPM: Request to reinstate dispensing registration.

The Board has received a new Initial Registration to Dispense Drugs and Devices application from Dr. Stone. Ms. Penttinen advised that she has confirmed directly with DEA that Dr. Stone's registration with that agency has been fully reinstated without restriction.

MOTION: Dr. Leonetti moved to approve Dr. Stone's application for dispensing registration. Mr. Rhodes seconded the motion.

DISCUSSION: 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.

Ms. Penttinen reviewed the report which indicates that there are currently 64 open complaints including those that were on today's agenda. There were two new complaints received within the last month. Dr. Leonetti inquired as to the status of cases for Dr. Brown which were referred to formal hearing. Ms. Penttinen advised that she initially had a great deal of difficulty in scheduling the hearings due to scheduling conflicts with Dr. Brown's attorney and availability of expert witnesses. Ms. Miles stated she would like the formal hearings to be completed within the next six months. The remaining Board members were in agreement.

IX. Call To The Public

There were no requests from the public to address the Board.

X. Next Board Meeting Date:

a. January 8, 2014 at 8:30 a.m.

XI. Adjournment

MOTION: There being no other business before the Board, Dr. Leonetti moved to adjourn the meeting. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the meeting was adjourned at 9:53a.m.