

# More Bizarre Podiatric Legal Cases

Here are actual reports of professional license disciplinary actions.



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**R**ecently, *Podiatry Management* published six scenarios where podiatrists got into trouble for various reasons. This month, we examine an additional six scenarios. Please note that while all states have their own regulations as to what is disciplinary, most, if not all the scenarios that are presented in this article would be actionable against a professional license in all fifty states.

**1. Committing fraud:** This podiatrist met his soon-to-be girlfriend and practice manager at his local church. It turns out that she had a problem with opioids. Before you know it, he was writing her prescriptions. There was no legitimate medical chart. There was no legitimate reason for her prescriptions. They eventually broke up. She left his employ. He refused to continue prescribing opioids. She reported him to the podiatry board. This podiatrist actually had a degree in theology from an Ivy League School. Things spun out of control.

In the end, the doctor agreed to practice without prescribing any controlled substances. He was put on

probation for two years. During this time, he started to prescribe opioids without authorization again for other people who were working for him. He was his own attorney this time. It did not end well.

**2. Inaccurately filling out official documents:** A general practitioner was performing independent medical examinations (IME) for an attorney.

years ago. In attendance was an orthopedist who had over 40 years' experience in ankle injuries. The podiatrist was warned time and time again, during his preparation, that he should not act in an arrogant way.

However, he insisted upon lecturing the highly credentialed orthopedist all about ankle injuries. He was literally pulled out of the room and told to calm down. He refused and

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The examinations always involved pedal trauma to the ankle. The IME reports, a dozen or so, were virtually identical. Most likely, the insurance company put two and two together and was suspicious that several policyholders all had the same injury, examined by the same doctor with identical reports. It became apparent that the only training this general practitioner had in ankle injuries was a weekend course taken some

continued with his ankle lecture to an astonished actual expert in this area of medicine. The orthopedist, seeing what was occurring, advised the podiatrist to listen to his attorney. The podiatrist just went on and on until the interview ended. Here is the astonishing part; we never heard back from the authorities. Apparently, the investigation was lost between the cracks.

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**3. Inappropriate behavior with a patient:** The podiatrist performed bunion surgery in an outpatient setting. It was done under general anesthesia, with a board-certified anesthesiologist. The surgery was performed without incident—that is, without any medical or surgical incident. The patient woke up stating that the podiatrist was groping her breasts during the surgery. Her brother was a policeman, and the Podiatry Board took her complaint seriously. It got as far as a hearing.

It turned out that the state never spoke to the three other people in the room besides the podiatrist. There was the anesthesiologist, a sterile circulating nurse, and a non-sterile circulating nurse. All three testified under oath that the podiatrist was gowned and gloved and was busy performing the bunionectomy. He never so much as shook the patient's hand prior to, during, or after the surgery. They all testified he never groped the patient's breasts. The anesthesiologist was the only person, along with a nurse, who was with the patient when she woke up in recovery, so the podiatrist could

ing to submit his advertisements for pre-approval by anyone the board designated. The board refused. It went to a hearing. The state's expert arrived and appeared ready to be examined. However, he may not have

tive Law Judge. Then, we showed him an advertisement from his practice with his name on it. He sheepishly admitted he was there for revenge against our podiatrist for some real or imagined slight from many

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been ready for his cross-examination. As we were given their expert's name a month or so prior to the hearing, we were able to perform extensive research on this person. He had been sued some years prior. At that time, prior to electronic filing, records of medical malpractice cases were available in the dusty basements of various courts. We found some!

During his own sworn testimony in a prior podiatric malpractice case, defending himself, he proudly bragged about being board certified

years before. After that, we produced ten other local advertisements from podiatrists that were much more "colorful" than any advertisement used by our podiatrist. Verdict: Not guilty of any allegation.

**5. Treatment below the standard of care:** The podiatrist years before had been disciplined for Medicaid fraud. Years passed, and we successfully petitioned the state for her to be reinstated. Now, there was a patient complaint as to an infection on a lesser toe. Our podiatrist's chart clearly stated that a culture and sensitivity was taken. There was no copy of the C&S results in the chart. Unfortunately, while the chart stated that there was a Staph aureus infection, the sensitivities of the various antibiotics tested were nowhere to be had. At the time, she prescribed Keflex since the C&S results revealed a sensitivity to cephalosporins. The patient had no known allergy to the cephalosporins or penicillin.

As it was lost/misplaced, the antibiotic sensitivities could not be corroborated by the lab printout. The laboratory had closed subsequent to the treatment of this patient. With the podiatrist's prior record of fraud, an offense concerning truthfulness, the state was not inclined to take the podiatrist's word for anything. In a last-ditch effort to find the missing C&S report, she removed every file from her cabinets. She went through every page of every chart to see if the report had somehow been mis-

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not have performed the alleged monstrosity while she was still asleep in the recovery room. It did not take the panel long to deliberate and find the podiatrist "not guilty" of any and all allegations.

**4. False/misleading advertising:** A podiatrist was accused of false or misleading advertising. In the advertising, the podiatrist claimed to be board certified by an APMA-unrecognized board. The advertisement in question also claimed that the podiatrist was using "state-of-the-art" equipment with surgery performed through very small incisions. The podiatrist had offered the board to change his advertising, even offer-

by the same board advertised by our podiatrist. He went into detail why it was a legitimately credentialed board by NOCA and recognized by various agencies and entities. It gets better. In one of his old advertisements, he was bragging about how his facility is "state of the art" and how he performs surgery with minimal incisions. We obviously let him go on and on at the hearing on direct examination by the state's prosecutor about his background and why our podiatrist's advertising was misleading. We even had him repeat it for our cross-examination, when we suddenly showed him a transcript. We asked him to read the appropriate pages to the panel and Administra-

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filed. In the end, we suggested she thoroughly go through all the labs of any patient seen on the visit after the C&S was taken. It was her office's policy not to file the lab results until the podiatrist had next seen the patient so that the podiatrist would have the test results in hand when she saw the patient. She did have the patient logs and appointment book that covered the date in question. Bingo! The C&S report was mistakenly filed in one of the other patient's files that was seen that same date. A copy was sent to the state. The investigation was ended prior to any hearing.

**6. Inappropriate conduct with a patient/use of profanity:** The podiatrist had treated this patient for several years without a problem. She would come to the office every few months for debridement of plantar

keratosis, obtaining immediate relief. One day, there was a patient emergency. While that patient's life was literally being saved by the podiatrist, the debridement patient became very irate that she had to wait for over an hour while EMTs and an ambulance arrived and transported a now stable patient to the hospital. When the podiatrist finally came into the treatment room of her now irate patient, it was the patient who was spewing profanity. We obtained affidavits (sworn statements) from the EMTs as to the medical emergency and an affidavit from the podiatric assistant as to the irate patient's conduct and colorful verbiage. All affidavits stated that nobody had heard even a "gosh darn" from the podiatrist. The investigation promptly ended without any adverse consequence.

Between the two articles, an even dozen bizarre scenarios have been presented. These cases underscore

the importance of having complete, neat records and using a competent health law attorney. However, the common thread among these twelve scenarios is that as podiatrists, you deal with the public. Be prepared for anything and everything. **PM**

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**Dr. Kobak** is Senior Counsel in Frier Levitt's Healthcare Department in the Uniondale, New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Health Care Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.