



Even More Tales from the Vault

Here are some interesting podiatry board cases that should serve as warnings.

BY LAWRENCE F. KOBAK, DPM, JD

It is time to dust off a few more actual cases that involved podiatrists and a licensing board. Be warned: you cannot make this up!

The Saint

A few years ago, a very sincere podiatrist was investigated involving his treatment of a diabetic patient. His practice consisted of many diabetic patients with decubitus ulcerations. He carefully documented his treatment. He meticulously took dated photographs, from day 1. This way, there could be no dispute as to the patient's condition when s/he was first seen. The ulceration was measured as to depth and size. Detailed records of patient compliance and lack of compliance also graced his very detailed medical records.

This patient had been morbidly obese and initially arrived in the office with several gangrenous toes. She was

only 31 years old, with two young children. A fingerstick demonstrated a stat blood glucose reading over 400. The podiatrist immediately referred her to a diabetologist. She never went. It was charted. He attempted to call

podiatrist did the best he could under the circumstances, but the gangrene progressed with each office visit. She had refused hospitalization. After a month, the patient stopped coming. Nobody answered when he called her.

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her primary care physician, but there was no record that this patient ever went to that doctor. He then attempted to call her obstetrician/gynecologist, only to find out he was given a phony name. The podiatrist, finding gangrene, absent pedal pulses, with a delayed capillary fill time, referred the patient to a vascular specialist. Again, the patient refused to go. The

He mailed her a certified letter that went undelivered. Subsequent events revealed that the patient had died from complications of her diabetes. She had been found unconscious, but it was too late. She had kidney failure, followed by multi-organ failure.

The podiatrist next heard from an attorney representing this lady's es-

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tate. The letter alleged that the podiatrist had caused the gangrene with his negligent care. The podiatrist, with the permission of his malpractice carrier, sent a copy of the dated photographs that clearly showed that was not the case. He never heard back from the attorney. Several months later, he received a letter from his state podiatry board asking for a copy of this patient's medical records. They were provided in a timely fashion.

Several months later, he was summoned for an interview by a representative of the podiatry board. He was accompanied by his attorney. After going over the patient's treatment by the podiatrist, the interviewer suddenly turned to the podiatrist. The interviewer stated that it was obvious that the podiatrist was not responsible for the death of this patient, and that his treatment appeared to be entirely appropriate, even laudatory under the circumstances. He then stated that the podiatrist should be relieved by this. Instead, the podiatrist began to sob. It was genuine and quite unnerving.

The interviewer wanted the podiatrist to explain his emotional response to his exoneration. The podiatrist explained that a young mother was needlessly lost. Children would grow up without a mother. A young father would be a widower. He took no pleasure at his name being cleared; the important event was the needless tragedy that had occurred. His response made his attorney feel proud to represent such a saintly professional.

The Sinner

Years ago, a podiatrist had an old office. The equipment was outdated. The furniture had seen better days. The carpeting was beyond cleaning. Then, there was a flood in the office. "Somehow", the outdated equipment and old furniture from a podiatrist's newer office, wound up in the flooded office. The insurance adjuster was a very seasoned investigator who had seen it all. The damage noted on the equipment and furniture did not match up with what he would have expected from the flood; the height

of the water and the pollutants that were part of the flood.

While the claim against the insurance company was quietly dropped by the podiatrist, it was not forgotten by the adjuster. Although it was never disclosed, most likely the adjuster reported this unprofessional conduct to the state board of podiatry. As in most states, unprofessional conduct does not have to occur while treating a patient. As a matter of fact, it might have nothing to do with the profession of podiatry. Driving while drunk is often punished by a licensing board.

During her interview, it became apparent that the Board was aware of her alleged insurance scheme. Rather

pounded medication that the podiatrist was selling was reimbursable at more than \$100 per dozen packets that were then mixed in a basin of warm water. The patient's foot would soak in this concoction.

There were at least two problems with this scenario. One, the podiatric physician was profiting from his "prescriptions" and had a definite incentive to treat the patient in a way that spun off tremendous profit. Second, the treatment was not medically indicated, regardless of the profit motive. Simply put, there was no science behind this treatment plan, just profit. Try as they might, the podiatrist's experts could find no peer-reviewed, evidence-based studies that supported

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than face the board hearing, it was time for a deal. The best deals are obtained earlier in the process. It allows the board and their attorneys to avoid extra work and effort. It should also be pointed out that most states protect the identity of the person who reports the practitioner to the state board. The identity of the reporting person might be revealed at a hearing if that person testifies.

Money Doesn't Equal Honey

A podiatrist was selling various types of medication in his office. In that state, podiatrists were allowed to dispense and sell medication in their offices. In some states, such as New York, this is generally not allowed. However, most states would conclude that if the podiatrist was prescribing a compounded medication, with antibiotics mixed in with other ingredients, for unconfirmed infections, this would be problematic.

In this case, confirmatory cultures and sensitivities were not taken. Some patients, going by the medical records, had fungal or yeast infections. It was probably treatable by a relatively inexpensive topical cream, or an over-the-counter preparation. Of course, this is assuming that the patient needed treatment. The com-

the use of this product. The infections themselves were never confirmed to the satisfaction of the state board investigators. To put it bluntly, this was a scheme to game the system.

A practice "manager" was also part of this scheme. He helped to bring in patients that willingly came in for treatment and were coached to talk about "itching" and redness between their toes. Eventually, this pattern ended when a patient was not "satisfactorily rewarded" for her visit to the podiatrist as promised by the practice manager.

Before long, the podiatrist was being investigated for federal insurance fraud. He was indicted for violating the Federal Anti-Kickback Statute and the False Claims Act. It turned out that the Federal government had the practice manager recorded, offering bribes to potential patients. It also had the podiatrist on video, with cursory examinations prior to unneeded dispensing of compounded powder. He pleaded out prior to trial. The podiatrist had pleaded guilty to a felony.

Criminal convictions are reportable to the National Practitioner Data Bank. That serves as healthcare providers' professional report card. In a few

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months, the podiatrist's state board gave him a call. The podiatrist was determined to explain to the state board that his treatments were justified and

with the premise that the finding is final. There is one exception. If you are found guilty of committing an act in one state, that would not be a crime or unprofessional conduct in another state, that is a complete defense. Ad-

schools. Maybe it should be. However, I doubt the podiatrist in the example cited needed a constitutional scholar to know that his scheme was illegal and could lead to nothing good.

Old "war stories" can be scary. Hopefully, they will help you avoid making a big mistake. **PM**

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useful for the patients. He was in for a rude awakening. Once you are found or plead guilty, the guilt for that crime cannot be explained away; the result is considered final. You are a convicted felon in this case. At best, you can mitigate the damages by explaining your guilt. It is of no use in contesting this. Similarly, if in one state there is a finding of a violation of unprofessional conduct, another state will start

ditionally, if your conviction was overturned on appeal, that would also be a complete defense.

In New Jersey, there is a type of insurance fraud that does not require the intent to defraud. No such law exists in New York. The charges against the podiatrist were dropped once this was pointed out.

All of this might sound a bit confusing. This is not taught in podiatry



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OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Healthcare 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.
