

BEFORE THE VIRGINIA BOARD OF MEDICINE

IN RE: PETER FLOYD KELLY, D.P.M.
License Number: 0103-000746
Case Number: 151873, 152967

CONSENT ORDER

JURISDICTION AND PROCEDURAL HISTORY

Pursuant to Virginia Code §§ 2.2-4019 and 54.1-2400(10), a Special Conference Committee of the Board held an informal conference on December 17, 2014, in Henrico County, Virginia. Peter Floyd Kelly, D.P.M., appeared at this proceeding and was represented by legal counsel, Stephen D. Rosenthal, Esquire. On January 13, 2015, the Board entered its Order from informal conference. By letter dated February 16, 2015, Dr. Kelly requested a formal administrative hearing and on February 24, 2015, the Board vacated its January 13, 2015 Order and granted Dr. Kelly's request for a formal administrative hearing.

The Virginia Board of Medicine ("Board") and Peter Floyd Kelly, D.P.M., as evidenced by their signatures hereto, in lieu of proceeding to this formal administrative proceeding, enter into the following Consent Order affecting Dr. Kelly's license to practice podiatry and surgery in the Commonwealth of Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Peter Floyd Kelly, D.P.M. was issued License Number 0103-000746 to practice podiatry and surgery on July 1, 1987, which is scheduled to expire on January 31, 2018.
2. Peter Floyd Kelly, D.P.M., violated Virginia Code § 54.1-2915.A(3) in his care and treatment of Patient A in that:

a. On July 7, 2013, Patient A presented to Dr. Kelly's office with symptoms related to the regrowth of spurs over her previous bunionectomy site on her right hallux, at which time he diagnosed the patient with right hallux rigidus, noting severe osteoarthritis in her first metatarsophalangeal ("MPJ") joint, and recommended modified McBride bunionectomy surgery. There is no clear indication in Dr. Kelly's medical record that he discussed nonsurgical or other surgical options (e.g. fusion) with Patient A. On August 1, 2013, Dr. Kelly performed modified McBride bunionectomy surgery on Patient A to correct her right hallux rigidus.

b. On August 7, 2013, Patient A returned to Dr. Kelly's office for her initial post-operative visit. Dr. Kelly noted a "grossly contaminated" surgical wound, assumed "that infection [was] starting" and prescribed Cipro (C-VI) for the patient. Despite noting the possibility of infection, Dr. Kelly re-approximated Patient A's wound with steri-strips and placed a tight sterile dressing around the wound, instructing the patient to "leave the dressing on" and "leave her soft cast alone." Subsequently, from approximately August 9 - 14, 2013, Patient A sought treatment from another physician, who diagnosed her with an abscess and cellulitis and treated her with antibiotic injections; oral antibiotics (Bactrim (C-VI), amoxicillin (C-VI) and Avonex (C-VI)); antibacterial ointment and Lortab (C-III) for pain; and instructed the patient to change her wound dressing at least once daily.

3. Dr. Kelly would testify that prior to Patient A's August 1, 2013 modified McBride bunionectomy, he discussed his diagnostic findings and conclusions with Patient A, and reviewed various treatment options with the patient. Dr. Kelly would further testify that Patient A preferred to just have the bump removed from her right hallux and was disinterested in nonsurgical options or in having the arthritis of the joint addressed by joint removal.

4. Dr. Kelly would testify that when he saw Patient A six (6) days post-operatively, she presented with a homemade wound dressing she had created and that the patient's wound had "blown out," since large amounts of blood and fluid had poured through the wound. Dr. Kelly would further testify that at this visit, despite the fact that his medical record documents infection, the wound was not very swollen and had started to settle down some, leading him to surmise that an alternative diagnosis to the patient's infection was the patient's weight-bearing activity (causing the wound to blow out), contrary to his post-operative instructions

5. Dr. Kelly violated Virginia Code §§ 54.1-2915.A(3), (17) and (18) and 54.1-3408.B(1) and 18 VAC 85-20-29.A.1 of the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic in his care and treatment of Patient B on or about June 6, 2013, in that he authorized and allowed Individual X, a radiological technologist-limited employed by his podiatric practice who was acting as his surgical assistant, to administer a single tablet each of hydrocodone (C-III), Valium (C-IV), Xanax (C-IV) and amoxicillin (C-VI) to the patient prior to the patient's office-based modified McBride unionectomy surgery. Further, by Dr. Kelly's own admission, these medications were administered to the patient by Individual X when he was not physically present at the facility.

6. Dr. Kelly would testify that at the time of Patient B's complaint, his practice, on the limited occasions when he was going to be late for a surgical appointment, was to remove medications, including narcotics and benzodiazepines, from a locked safe and place the appropriate patient doses in a cup. He would testify that he would then place the cup in a locked room in his office, to which the office assistant had a key, so that the office assistant could access the medications and administer them to the surgery patients. Dr. Kelly would further testify that on the occasions when his office assistant provided medication to a patient, the patient was observed by the office assistant after medication(s) had been administered during his absence. Dr. Kelly did not provide his office staff with basic life support or

advanced cardiac life support training; the office assistant was instructed to contact him if an issue of concern arose.

7. There was no evidence presented that any patient suffered an adverse situation due to the administration of medication by Dr. Kelly's office assistant.

8. Dr. Kelly would testify that since Patient B's complaint, he has changed his practice and is now the only one who accesses and administers medications to patients from start to finish.

CONSENT

Peter Floyd Kelly, D.P.M., by affixing his signature to this Consent Order, agrees to the following:

1. I have been advised to seek advice of counsel prior to signing this document and am represented by Douglas J. Behr, Esq. and Cressinda D. Schlag, Esq.;

2. I am fully aware that without my consent, no legal action can be taken against me or my license except pursuant to the Virginia Administrative Process Act, Virginia Code § 2.2-4000 *et seq.*;

3. I acknowledge that I have the following rights, among others: the right to a formal administrative hearing before the Board; the right to representation by counsel; and the right to cross-examine witnesses against me;

4. I waive my right to a formal hearing;

5. I admit to the Findings of Fact and Conclusions of Law contained herein and waive my right to contest such Findings of Fact and Conclusions of Law and any sanction imposed hereunder in any future judicial or administrative proceeding in which the Board is a party;

6. I consent to the entry of the following Order affecting my licensure to practice podiatry and surgery in the Commonwealth of Virginia.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Virginia Board of Medicine hereby ORDERS as follows:

1. Peter Floyd Kelly, D.P.M., is REPRIMANDED.

2. Dr. Kelly is assessed a MONETARY PENALTY of \$1,000.00. This penalty shall be paid to the Board by certified check or money order made payable to the Treasurer of Virginia within 60 days from the date of entry of this Order. Failure to pay the full monetary penalty by the due date may cause the matter to be sent for collection and constitute grounds for an administrative proceeding and further discipline.

3. Dr. Kelly's license is subject to the following TERMS and CONDITIONS:

a. Within 90 days from the date of entry of this Order, Dr. Kelly shall provide written proof satisfactory to the Board of successful completion of ten hours of continuing medical education ("CME") each in the subjects of wound care/infection management and medical record-keeping. Such CMEs shall be approved in advance of registration by the Executive Director of the Board and shall be completed through face-to-face, interactive sessions (i.e., no home study, journal or Internet courses). Any CME hours obtained in compliance with this term shall not be used toward the Board's CME requirements for license renewal.

b. Dr. Kelly shall bear any costs associated with the terms and conditions of this Order.

c. Dr. Kelly shall comply with all laws and regulations governing the practice of podiatry and surgery in the Commonwealth of Virginia.

4. Any violation of the foregoing terms and conditions of this Order or any statute or regulation governing the practice of podiatry and surgery shall constitute grounds for further disciplinary action.

5. This Order shall remain in effect until the Board has notified Dr. Kelly in writing that he is released from these terms and conditions.

Pursuant to Virginia Code §§ 2.2-4023 and 54.1-2400.2, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD

William L. Harp
William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 12/12/16

SEEN AND AGREED TO:

Peter Floyd Kelly
Peter Floyd Kelly, D.P.M.

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF Roanoke, TO WIT:

Subscribed and sworn to me, a notary public in and for the Commonwealth of Virginia at large, on this 15th day of December, 2016

JILL CLERC WEST
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #166359
My Commission Expires

Jill Clerc West
Notary Public

My commission expires: 11/31/2018

Registration No.: 166359