



Douglas A. Ducey,  
Governor

# Arizona State Board of Podiatry Examiners

“Protecting the Public’s Health”

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## OPEN SESSION MINUTES

### October 11, 2017

Members of the Arizona State Board of Podiatry Examiners (“Board”) held a meeting at 8:39 a.m. on Wednesday, October 11, 2017 at the Board’s office in Suite B-1, 1400 West Washington Street, Phoenix, Arizona 85007. Executive sessions were held from 9:25 a.m. to 9:40 a.m. and from 12:45 p.m. to 12:49 p.m.

#### BOARD MEMBERS:

Barbara Campbell, DPM..... Board President and Practitioner Member  
John Rhodes ..... Secretary and Public Member  
Lynn Hamilton ..... Public Member  
Barry Kaplan, DPM. .... Practitioner Member  
Joseph Leonetti, DPM..... Practitioner Member

#### STAFF AND ASSISTANT ATTORNEY GENERAL PRESENT:

Ryan P. Edmonson..... Executive Director  
Frankie Shinn-Eckberg, Esq. .... Assistant Attorney General

#### GUEST(S) PRESENT AND/OR PARTICIPATING

Jerome A. Cohn, DPM..... Board’s Investigator  
Patrick Farrell, DPM..... Respondent  
Kevin O’Brien, DPM..... Respondent  
Kimberly Kent, RN, Esq..... Respondents’ Attorney  
☎ Dawn Gabler, Mother of Minority Complainant ..... Investigative Case 17-14-C  
Robert Frykberg, DPM ..... Respondent  
Erin Martin, DPM ..... Respondent

☎ Appeared telephonically

**OPEN SESSION**

The meeting was called to order at 8:39 a.m. by Dr. Barbara Campbell. The following order of business was then considered:

**DECLARATION OF CONFLICTS OF INTEREST – A.R.S. § 38-503**

No new conflicts were declared.

**ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**

Investigation File(s)

16-28-C; Farrell, Patrick, DPM

Dr. Patrick Farrell was present with his legal counsel, Kimberly Kent. Dr. Barbara Campbell summarized the matter and the conclusion of the malpractice case. Ms. Kent explained the trial process in this matter, including that the plaintiff approached Dr. Farrell with a settlement.

After discussion, a motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

17-14-C; O'Brien, Kevin, DPM

Dr. Kevin O'Brien was present with his legal counsel, Kimberly Kent. Dawn Gabler was present telephonically. Dr. Barbara Campbell summarized Dr. O'Brien's current disciplinary order regarding practice restrictions and terms of probation. Dr. Jerome Cohn was present to provide a summary of his investigative report and stated that the complaint dealt with several patients, including Ms. Gabler's son. He requested that the Board allow him to summarize each patient's care separately. After the Board agreed, Dr. Cohn summarized his report regarding Ms. Gabler's son's care. Ms. Gabler commented on the Dr. O'Brien's oversight of leaving in a subtalar implant while simultaneously placing a new subtalar implant in the same area of the subtalar joint. Ms. Kent and Dr. O'Brien described what they believed was Dr. O'Brien's compliance with the current order and the notification required to perform certain surgical treatments.

The Board discussed going into executive session for legal advice.

**EXECUTIVE SESSION**

A motion was made by Dr. Barbara Campbell, seconded by Lynn Hamilton and passed unanimously to go into executive session at 9:25 a.m. to seek legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding file no 17-14-C.

After consideration in executive session, the Board reconvened in open session at 9:40 a.m.

**OPEN SESSION**

**ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION**

Investigation File(s)

17-14-C; O'Brien, Kevin, DPM

Dr. Kevin O'Brien was again present with his legal counsel, Kimberly Kent. Dawn Gabler was present telephonically. Dr. Jerome Cohn was present and summarized his report concerning patient PT. Dr. Cohn noted that there were issues of inconsistency with Dr. O'Brien's notes and the culture taken was delayed being sent to the lab. In addition, Dr. Cohn noted some issues with billing codes.

Dr. O'Brien described his treatment of patient PT and stated that the delay in lab results was due to the lab and not his submission to the lab.

Dr. Cohn summarized his report concerning patient JS. Dr. Cohn again noted inconsistencies in Dr. O'Brien's notes and record keeping. Dr. Cohn noted that JS was a difficult case in that Dr. O'Brien dealt with a diabetic patient who was not consistently compliant. The patient developed several issues and bone infection, which required resection that was performed in the office. Dr. Cohn stated he had concerns with the lack of cultures, inconsistent reports and billing codes that did not meet a level of documentation. Dr. O'Brien described his treatment of this patient, JS and stated that the patient did not have an infection when he closed the wound and that there was a possible mid-foot infection, but not due to his surgery.

Dr. Cohn summarized his report concerning patient, CB. The patient presented to Dr. O'Brien with a ruptured Achilles tendon. Dr. Cohn stated that location of the surgical repair was performed in Dr. O'Brien's office. Dr. Cohn stated that unless Dr. O'Brien's office is a certified surgical center that has proper monitoring of sterility for equipment and infection control reports this procedure, or any procedure, of this nature or osseous would be inappropriate to perform in the office. Dr. Cohn also noted that the patient was quickly discharge once the stitches were removed, but should have still been expected to have more continuity of care. Ms. Kent described Dr. O'Brien's current practice, changes made and EMR additions and changes to his record keeping. Dr. O'Brien stated that patient CB did not want to travel to a hospital or surgery center, which is why he performed the procedure in his office.

Dr. Cohn summarized his report concerning patient, AC. Dr. Cohn stated that there were concerns regarding the vascular status documented throughout the records and that they were diminished to the point procedures would likely result in complications. Dr. Cohn noted that no infectious disease consult was obtained and there was significant concern regarding an apparent transmetatarsal amputation performed on October 17, 2016. Dr. O'Brien's records reflect that the forefoot attached by minimal tissue as most was necrotic. Dr. Cohn stated that if debridement of any tissue resulted in the completion of a transmetatarsal amputation, which appeared to be the case, then there may be an issue with practicing outside the scope of our license. Dr. O'Brien stated that he did not perform an amputation. He also stated that the patient's spouse is a nurse, who would not let Dr. O'Brien dress or undress the wound. He stated, in fact, that when the spouse removed the dressing that the digits fell off into the dressing

Dr. Cohn summarized his report concerning patient, ED. Dr. Cohn stated that Dr. O'Brien provided records because it was consistent with procedures performed during the period that the complainant provided. Dr. Cohn noted that the procedure performed on ED was described as a resection of the distal aspect of the second digit bilaterally utilizing a rongeur. In addition, Dr. O'Brien performed a flexor tenotomy third and that the patient was described to have tolerated well through postoperative care and as being uneventful. Dr. Cohn noted that no x-rays were provided to verify the procedure or its outcome.

The Board and Ms. Kent discussed issues with shared records and that Dr. Cohn and Ms. Kent would work together to make certain that both Dr. Cohn and the Board, and Dr. O'Brien and Ms. Kent would all have the same records to review in this matter.

After discussion, a motion was made by Dr. Barbara Campbell, seconded by Dr. Barry Kaplan and passed unanimously to conduct an informal hearing with the licensee at its next meeting.

Frankie Shinn-Eckberg requested clarification regarding what documents need to be exchanged. She also stated that a court reporter would not be necessary for the informal hearing since the Board digitally records its meetings. Ryan Edmonson agreed to provide Ms. Kent with the entire record of documents the Board has in its possession and to do so electronically. The Board also granted limited authority to settle the matter to Ms. Shinn-Eckberg and if necessary to hold an informal settlement conference with Ms. Kent.

*The Board took a break from 11:04 a.m. to 11:22 a.m.*

18-02-B; Frykberg, Robert, DPM

Dr. Robert Frykberg was present and briefly described his involvement in the medical malpractice suit filed against the Veteran's Administration.

After discussion, a motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

18-03-B; Martin, Erin, DPM

Dr. Erin Martin was present and described the treatment performed and the patient's non-compliance post-treatment. Frankie Shinn-Eckberg provided the Board with options on how to resolve the open file.

After discussion regarding the options available, a motion was made by John Rhodes, seconded by Lynn Hamilton and passed unanimously to dismiss the case without prejudice.

17-20-C; Brown, Jon David, DPM

Board staff provided a summary of the matter and requested direction since Dr. Brown's license was surrendered July 31, 2017. Frankie Shinn-Eckberg provided advice on how the Board could proceed based on the surrender.

A motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed to assign the file to Dr. Jerome Cohn to review the matter and request records reasonable to conduct an investigation.

18-01-B; Di Nucci, Kris, DPM

After Dr. Barbara Campbell summarized the matter, including the record submission, a motion was made by Dr. Barbara Campbell, seconded by Dr. Barry Kaplan and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

18-04-B; Nelson, Glenn, DPM

After Dr. Barbara Campbell summarized the matter, including the record submission, a motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

18-05-B; Andersen, Robert, DPM

After Dr. Barbara Campbell summarized the matter, including the record submission, a motion was made by John Rhodes, seconded by Dr. Barry Kaplan and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

18-06-B; Kravitz, Alan, DPM

After Dr. Barbara Campbell summarized the matter, including the record submission, a motion was made by Dr. Barry Kaplan, seconded by Dr. Joseph Leonetti and passed unanimously to direct staff to assign an investigator to conduct an investigation and file an investigation report with the Board.

18-07-B; Suykerbuyk, Christopher, DPM

After Dr. Barbara Campbell summarized the matter, including the record submission, a motion was made by Dr. Barbara Campbell, seconded by Dr. Joseph Leonetti and passed unanimously to direct staff to assign an investigator to conduct an investigation and file an investigation report with the Board.

18-09-C; Wessel, Loren, DPM

Dr. Barbara Campbell summarized the matter, and the Board discussed the matter of “patient poaching” and agreed that any patient should feel like they can see whichever doctor they need and that no doctor has a captive patient that must only see them.

After discussion, a motion was made by John Rhodes, seconded by Dr. Joseph Leonetti and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

Review Investigation File and Proposed Settlement Offer

17-07-C; Wessel, Loren, DPM

Frankie Shinn-Eckberg provided an update regarding the proposed settlement offer. Ms. Shinn-Eckberg provided the detail of Dr. Loren Wessel’s one amendment to the settlement. Ms. Shinn-Eckberg stated that Dr. Wessel is in complete agreement with the suspension order, but would like for the Board to consider waiting until January 1, 2018 to commence the suspension so that he won’t get caught up in a possible patient abandonment issue. The Board agreed to accept the proposed amendment.

A motion was made by Dr. Barry Kaplan and seconded by John to accept the proposed settlement as amended, to include a three-year suspension, commencing on January 1, 2018—not to run concurrent with his current civil probation, the completion of four hours of ethics during each renewal cycle and must renew his Arizona podiatry license during each renewal cycle. The motion passed 5 – 0 by the following roll call vote:

Dr. Joseph Leonetti – Aye  
Dr. Barbara Campbell – Aye  
Dr. Barry Kaplan – Aye  
John Rhodes – Aye  
Lynn Hamilton – Aye

Renewal Application(s) for Arizona Podiatric License and Dispensing Registration

Wessel, Loren

A motion was made by Dr. Barbara Campbell, seconded by John Rhodes and passed unanimously to rescind the Board's previous disposition in this matter to deny Dr. Loren Wessel's 2017 podiatric license renewal. The motion included approving Dr. Wessel's 2017 license renewal application.

Volunteer Health Services Registration – A.R.S. § 32-3217

Haag, Lester

After review of the application, a motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to approve of the applicant's application for a Volunteer Health Registration.

Application for Examination – A.R.S. § 32-822

Hatch, David, DPM

Park, Darci, DPM

Randolph, Jessica, DPM

Richey, Johanna, DPM

Safar, Sina, DPM

Statler, Katy, DPM

After review of the applications, a motion was made by Dr. Barry Kaplan, seconded by Lynn Hamilton and passed unanimously to approve of the applicants' applications to sit for the examination.

**REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD MEETING MINUTES**

Discussion and approval of the Open Session Minutes from the September 13, 2017 board meeting

After making an amendment, a motion was made by Dr. Barry Kaplan, seconded by Lynn Hamilton and passed unanimously to approve the Open Session Minutes from the September 13, 2017, board meeting as amended.

Discussion and approval of the Executive Session Minutes from the September 13, 2017 board meeting

A motion was made by Dr. Barry Kaplan, seconded by Lynn Hamilton and passed unanimously to approve the Open Session Minutes from the September 13, 2017, board meeting as written.

**EXECUTIVE DIRECTOR'S REPORT**

The Board reviewed the budget, agency operations and complaint log with Ryan P. Edmonson.

The Board discussed going into executive session the executive director position vacancy.

**EXECUTIVE SESSION**

A motion was made by John Rhodes, seconded by Dr. Joseph Leonetti and passed unanimously to go into executive session at 12:45 p.m. to discuss or consider the executive director's employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body pursuant to A.R.S. § 38-431.03(A)(1).

After consideration in executive session, the Board reconvened in open session at 12:49 p.m.

**OPEN SESSION**

**EXECUTIVE DIRECTOR'S REPORT**

The Board directed Ryan Edmonson to schedule a special board meeting to interview a potential candidate for the position of executive director of the podiatry board.

**SUMMARY OF CURRENT EVENTS**

None were discussed.

**DISCUSSION AND POSSIBLE ACTION ITEMS TO BE PLACED ON FUTURE MEETING AGENDAS**

None were discussed.

**CALL TO THE PUBLIC**

No one was present from the public.

**NEXT BOARD MEETING DATE**

Wednesday, November 8, 2017 at 8:30 a.m.

**ADJOURNMENT**

A motion was made by Dr. Barbara Campbell, seconded by Lynn Hamilton and passed unanimously to adjourn at 12:54 p.m.