



Douglas A. Ducey,  
Governor

# Arizona State Board of Podiatry Examiners

“Protecting the Public’s Health”

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## OPEN SESSION MINUTES

### April 13, 2016

Members of the Arizona State Board of Podiatry Examiners (“Board”) held a meeting at 8:34 a.m. on Wednesday, April 13, 2016 at the Board’s office in Suite B-1, 1400 West Washington Street, Phoenix, Arizona 85007. Executive sessions were held from 9:38 a.m. to 9:50 a.m. and from 10:37 a.m. to 10:53 a.m.

#### BOARD MEMBERS:

Barbara Campbell, D.P.M..... Board President and Practitioner Member  
John Rhodes ..... Secretary and Public Member  
Barry Kaplan, D.P.M. .... Practitioner Member  
Joseph Leonetti, D.P.M..... Practitioner Member  
M. Elizabeth Miles..... Public Member

#### STAFF AND ASSISTANT ATTORNEYS GENERAL PRESENT:

Ryan P. Edmonson..... Executive Director  
Frankie Shinn-Eckberg, Esq. .... Assistant Attorney General  
Marc H. Harris, Esq. .... Assistant Attorney General  
Michael Raine, Esq. .... Assistant Attorney General

#### GUESTS PRESENT AND/OR PARTICIPATING

Dedrie Polakof, D.P.M..... Board Investigator  
Jerome A. Cohn, D.P.M..... Board Investigator  
Stephen L. Barrett, D.P.M. .... Respondent  
Robert T. Evans, D.P.M..... Respondent  
Gordon Lewis, Esq..... Respondent’s Attorney  
Jon D. “David” Brown, D.P.M. .... Respondent  
Mary M. Peters, D.P.M. .... Respondent  
Frank G. Maben, D.P.M..... Respondent  
Bruce D. Crawford, Esq..... Respondents’ Attorney  
Complainant..... Investigative Case 15-23-C  
Complainant..... Investigative Cases 16-13-C and 16-14-C

The meeting was called to order at 8:34 a.m. by Dr. Barbara Campbell. The following order of business was then considered:

**OPEN SESSION**

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

Anonymous Complaint

Dr. Stephen L. Barrett was present and provided a summary of his practice, clinic and his responsibilities. Dr. Barrett explained his role when recommending patients to other doctors who can prescribe medicinal marijuana, but he does not and cannot write prescriptions for the same. He also stated that he treats neuropathy, but has never stated that he is a neurologist. Dr. Barrett provided all board members with three-ring binders, including thumb drives, detailing his practice in depth.

After the Board discussed the matter, they agreed to take no action to open a file or discipline due to no violations of Board Statutes and Rules and no obvious or perceived deception of practice. Dr. Barrett thanked the Board for their time and left the room.

Informal Hearing

13-02-C; Evans, Robert T., DPM

Dr. Robert T. Evans was present along with his legal counsel, Gordon Lewis. Dr. Jerome Cohn was present and provided a summary of his investigation. Dr. Evans read a statement regarding his treatment of the patient and requested that the Board not discipline him. The Board discussed the procedure in which Dr. Evans believed it to be a conservative procedure. After reviewing the post-operative x-rays, the Board was concerned that the correction, which was to be performed, did not take place, nor did the x-rays show that the screw had affixed to the bone. The Board also discussed their concerns with multiple cortisone shots in a one year period and the doctor's inappropriate billing amount, especially since one procedure billed for never took place.

The Board discussed going into executive session to seek legal advice.

**EXECUTIVE SESSION**

A motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to go into executive session at 9:38 a.m. to seek legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding file no. 13-02-C.

After consideration in executive session, the Board reconvened in open session at 9:50 a.m.

**OPEN SESSION**

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

Informal Hearing

13-02-C; Evans, Robert T., DPM

Dr. Robert T. Evans was again present along with his legal counsel, Gordon Lewis. Dr. Jerome Cohn was also present as the Board's investigator.

The Board discussed whether or not they believe there are any violations in this matter and agreed that there were many violations that occurred. M. Elizabeth Miles stated the violations she believed that Dr. Evans violated – those are: Arizona Revised Statutes (“A.R.S.”) §§ 32-852(6), 32-

854.01(11); failure to maintain adequate records..., 32-854.01(9); failure to obtain written informed consent..., 32-854.01(20); conduct that is harmful or dangerous to the health, welfare and safety of the patient and 32-854.01(23); clearly charging and/or collecting a clearly excessive fee. Dr. Barbara Campbell wished to add A.R.S. §§ 32-854.01(24) and (25); obtaining a fee by misrepresentation and charging a fee for services not rendered. Dr. Joseph Leonetti stated that the Board should consider whether or not they believe Dr. Evans should be allowed to continue to practice or whether he should be suspended for some time. Dr. Leonetti believed that Dr. Evans could continue to practice, but with certain conditions in place in an order to prevent future violations.

After the Board discussed terms of probation versus a suspension, a motion was made by M. Elizabeth Miles, seconded by Dr. Joseph Leonetti and passed unanimously to adopt the following Findings of Fact:

- Failure to maintain adequate records;
- Failure to obtain written informed consent;
- Conduct that was harmful or dangerous to the health, welfare and safety of the patient;
- Charging an excessive fee;
- Obtaining a fee by misrepresentation; and
- Charging a fee for services not rendered.

A motion was made by M. Elizabeth Miles, seconded by Dr. Barry Kaplan and passed unanimously to adopt the following Conclusions of Law:

- A.R.S. § 32-854.01(9);
- A.R.S. § 32-854.01(11);
- A.R.S. § 32-854.01(20);
- A.R.S. § 32-854.01(23);
- A.R.S. § 32-854.01(24); and
- A.R.S. § 32-854.01(25).

Based on the conduct described in the Findings of Fact and the Conclusions of Law, a motion was made by M. Elizabeth Miles and seconded by Dr. Barry Kaplan to issue an Order for probation for up to 12 months, but not less than six months, to include the following:

- A Decree of Censure;
- An administrative civil penalty of \$1,000.00;
- 10 hours of CME in the areas of billing and coding;
- 10 hours of CME in the area of medical record keeping;
- All CME is to be completed in the first six months of probation and all pre-approved by the Board and in addition to the statutorily required CME as part of the renewal process;
- Subject to a random chart audit, by the Board, of no more than 10 medical records of patients who received steroid injections;
- Subject to a random chart audit, by the Board, of no more than 10 medical records of patients having undergone osteotomies, arthroplasties or implant procedures; and
- After having completed six months of probation, the doctor may request early termination of the order.

Prior to the vote and during the discussion, Dr. Joseph Leonetti stated his concern of adding in a Decree of Censure with all the other terms of the probationary order and would like to see that the motion *not* include the Decree of Censure. John Rhodes agreed and also thought that the administrative civil penalty should be \$2,000.00 versus \$1,000.00. With no changes to the aforementioned terms of the order, the motion passed 3-0-2 by the following roll call vote:

Dr. Joseph Leonetti – Nay  
Dr. Barbara Campbell – Aye  
Dr. Barry Kaplan – Aye  
M. Elizabeth Miles – Aye  
John Rhodes – Nay

*The Board took a break from 10:15 a.m. to 10:31 a.m.*

#### Review, Discussion and Possible Action for an Informal Settlement Conference(s)

Michael Raine was present to advise the Board on all substantive and procedural issues related to the matter. Frankie Shinn-Eckberg was present, as the prosecuting attorney, and presented reasons for the Board to rescind its prior motion of moving this matter to a formal hearing and remanding it back to the informal hearing process to better allow for an informal settlement conference(s), with limited authority to settle.

A motion was made by Dr. Joseph Leonetti, seconded by M. Elizabeth Miles and passed unanimously to rescind the Board's previous vote of moving this matter to a formal hearing and remanding it back to the informal hearing process to allow for an informal settlement conference(s) between the doctor, her attorney, the Board's attorney, one member of the Board and the executive director, with limited authority to settle. The motion included that any agreed upon settlement would be presented to the Board a future meeting for consideration.

#### Investigation Files

##### 12-11-C; Brown, Jon D., DPM

Dr. Jon D. Brown was present. The complainant was not present. Dr. Dedrie Polakof was present and provided a summary of her investigation.

After board staff answered some questions, a motion was made by John Rhodes, seconded by M. Elizabeth Miles and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

##### 15-23-C; Brown, Jon D., DPM

Dr. Jon D. Brown was present along with his legal counsel, Bruce D. Crawford. The complainant was present. Dr. Jerome Cohn was present and began to provide a summary of his investigation. Prior to getting too involved in Dr. Cohn's summary, M. Elizabeth Miles requested to go into executive session to obtain legal advice.

### **EXECUTIVE SESSION**

A motion was made by M. Elizabeth Miles, seconded by Dr. Barry Kaplan and passed unanimously to go into executive session at 10:37 a.m. to seek legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding file no. 15-23-C.

After consideration in executive session, the Board reconvened in open session at 10:53 a.m.

### **OPEN SESSION**

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

##### Investigation Files

##### 15-23-C; Brown, Jon D., DPM

Dr. Jon D. Brown was again present along with his legal counsel, Bruce D. Crawford. The complainant was present. Dr. Jerome Cohn was also present as the Board's investigator. The Board stated that they greatly appreciated Dr. Cohn's investigative report and his summary. However, the Board agreed that instead of Dr. Cohn reading and/or summarizing his report that they have all read that they would rather just ask Dr. Cohn some specific questions about his investigation. Dr. Cohn answered the Board's questions related to the investigation.

Dr. Barbara Campbell stated to Dr. Brown that the Board will give him five minutes to summarize his position of the investigation and make a statement. Dr. Brown requested that the Board indulge him and allow him to describe himself so that the Board can familiarize themselves of who Dr. Brown is. Dr. Brown stated that through this investigation he has made significant changes in his practice. He described the changes that have taken place, especially in regard to documentation. He wanted to be clear that there is no diversion of medications by him, his staff or with anyone else selling them on the street. Dr. Brown explained changes he would like to make to maintain adequate health and well-being for himself and his family. Dr. Brown thanked Dr. Cohn for a fair evaluation, albeit not all of it being in his favor.

Dr. Campbell also stated that the Board will grant the complainant five minutes to summarize her complaint. The complainant stated that she feels that she already believes that she represented herself well in the previous opportunity to speak before the Board and that she has nothing to add other than to answer any questions that the Board may have.

M. Elizabeth Miles provided her personal summary of the facts she has read and believes that this matter should move to a formal hearing.

A motion was made by M. Elizabeth Miles, seconded by John Rhodes and passed unanimously to file a Complaint and Notice of Hearing.

##### 15-17-M; Zappa, Frank, DPM

Dr. Frank Zappa was not present. Dr. Zappa's legal counsel, Bruce D. Crawford was present on his behalf. Dr. Dedrie Polakof was present and provided a summary of her investigation. Mr. Crawford answered the Board's questions regarding the State of Illinois and its investigation.

After the Board discussed the matter, a motion was made by Dr. Joseph Leonetti, seconded by Dr. Barry Kaplan and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

15-21-B; Knochel, Joseph, DPM

The Board reviewed Dr. Ashwin Reddy's addiction report and evaluation. In Dr. Reddy's final statement, under the title "Assessment" he indicated that he has not read a police report or other court documentation and that his report and evaluation were written based only on information provided to him by Dr. Knochel.

A motion was made by M. Elizabeth Miles, seconded by Dr. Joseph Leonetti and passed unanimously to direct staff to request that Dr. Knochel provide a copy of the criminal docket and/or the arrest report to Dr. Reddy and request that he opine on whether or not those documents, or any other 3<sup>rd</sup> party documents, that Dr. Reddy may request, would have any additional impact on his assessment. The motion also included requesting that Dr. Knochel inquire whether or not Dr. Reddy recommends any form of treatment(s) and what his professional opinion is regarding the safety of Dr. Knochel's continued practice within the terms of any possible substance abuse issues and that another report be provided to the Board from Dr. Reddy.

16-10-C; Stewart, Alex, DPM

Dr. Alex Stewart was not present. Dr. Stewart's legal counsel, Bruce D. Crawford was present on his behalf. Dr. Jerome Cohn was present and provided a summary of his investigation.

After the Board discussed the matter, 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.

16-12-B; O'Brien, Kevin, DPM

The Board reviewed Dr. O'Brien's response and new advertisements.

Based on the information provided by Dr. O'Brien, a motion was made by Dr. Joseph Leonetti, seconded by John Rhodes and passed unanimously to dismiss the case due to no violations of Board Statutes and Rules.

16-13-C; Peters, Mary, DPM

Dr. Mary Peters was present along with her legal counsel, Bruce D. Crawford. The complainant was present. Dr. Dedrie Polakof was present and provided a summary of her investigation. The chief complaint was the number of steroid injections, which resulted in the rupture of her plantar fascia. The investigative report suggested that injectable steroids are available in short, intermediate and long acting strengths and multiple articles report a 3/100 chance of plantar fascial band rupture after cortisone therapy injection treatment.

The Board discussed the percentage of Kenalog used in the small confined space. Mr. Crawford stated that he appreciates that the Board is discussing this case and the following case independently, but that he and his clients have a couple of articles related to the amount of Kenalog given, which does not support the concept that it can cause plantar fascia tears. The Board reviewed one article that Mr. Crawford made available for the Board.

The Board tabled any action until after reviewing the subsequent and related case number 16-14-C; Maben, Frank, DPM.

16-14-C; Maben, Frank, DPM

Dr. Frank Maben was present along with her legal counsel, Bruce D. Crawford. The complainant was present. Dr. Dedrie Polakof was present and provided a summary of her investigation. The chief complaint was the same as in case 16-13-C.

Dr. Maben described his treatment of care for the patient and the number of injections he performed, which was one. He also stated that the patient had good success with the treatment by means of steroid injections, so he repeated the treatment. He stated that he generally always describes the potential risks of steroid injections, but cannot recall if that discussion took place for certain with this patient. He also provided an article regarding Kenalog injections, which discusses the limitations of steroid injections and he believed that he was within the limits of the number of injections allowable and that there are always perceived risks.

The complainant clarified that she did indeed receive four steroid injections and that the third injection was given by Dr. Maben and not the fourth as described by the Board's investigator. The fourth injection was given by Dr. Peters. The complainant made herself available to answer the Board's questions.

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

16-13-C; Peters, Mary, DPM

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.

*The Board took a break from 12:23 p.m. to 12:38 p.m.*

Termination of Consent Agreement

14-09-B; Kroleski, Janna L., DPM

The Board discussed whether or not there was any need to receive another evaluation since they just reviewed one in March and the next quarter ends in June and her Consent Agreement runs until the middle of May.

After the Board concluded that they were satisfied with almost two years of good evaluations, a motion was made by Dr. Barry Kaplan, seconded by John Rhodes and passed unanimously to accept the doctor's request and terminate the Consent Agreement one month early.

Request for Approval of Continuing Medical Education ("CME")

Au, Edward – Request for Pre-Approval prior to License Renewal

The Board reviewed and discussed Dr. Edward Au's request and his submitted materials. The Board determined that Dr. Au's request does not qualify for the Board's CME requirements.

A motion was made by Dr. Barbara Campbell, seconded by Dr. Barry Kaplan and passed unanimously to deny Dr. Au's request for pre-approval of the submitted CME for his license renewal because it does not meet A.A.C. R4-1-502.

American Podiatric Medical Association's Annual Scientific Meeting, Philadelphia July 14 – 17, 2016

A motion was made by Dr. Barry Kaplan, seconded by Dr. Joseph Leonetti and passed unanimously to pre-approve 26.5 hours of CME credit for doctors who participate in the American Podiatric Medical Association's Annual Scientific Meeting in Philadelphia on July 14 – 17, 2016.

Request for Approval of a Solicitation/Advertising Method and a Lymph Edema Clinic

After discussion, a motion was made by M. Elizabeth Miles, seconded by Dr. Joseph Leonetti and passed unanimously to direct staff to notify Dr. Rajesh Daulat that the Board views his requests as advisory and/or a request for legal advice and that they are not in a position to provide advice and/or legal advice.

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

Discussion and approval of the Open Session Minutes from the March 9, 2016 board meeting

After making an amendment, a motion was made by Dr. Barbara Campbell, seconded by Dr. Barry Kaplan and passed unanimously to approve the Open Session Minutes from the March 9, 2016, Board meeting as amended.

Discussion and approval of the Executive Session Minutes from the March 9, 2016 board meeting

After making an amendment, a motion was made by Dr. Barry Kaplan, seconded by Dr. Joseph Leonetti and passed unanimously to approve the Executive Session Minutes from the March 9, Board meeting as amended.

**LEGISLATIVE UPDATE AND DISCUSSION**

Board to receive an update regarding Arizona State Legislature bills, which may include HB 2310, HB 2357, HB 2466, HB 2487, HB 2501, SB 1283, SB 1443 and/or any other related legislation

Ryan P. Edmonson provided an update regarding Arizona State Legislature House and Senate proposed legislation that may impact the Board and answered questions from the Board.

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

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

Baker, Joseph, DPM

Dua, Reema, DPM

Holmes, Jeffrey, DPM

Hua, Natalie, DPM

Levitt, Andrew, DPM

Stuart, Jacob, DPM

Tager, Steven, DPM

After the Board reviewed the applications, a motion was made by M. Elizabeth Miles, seconded by Dr. Barry Kaplan and passed unanimously to approve of the applicants to sit for the examination.

Renewal Applications for Arizona Podiatric License and Dispensing Registration

Armstrong, David G., DPM

Barrett, Stephen L., DPM

Charski, John A., DPM

Dershowitz, Michael H., DPM

Howansky, Petrusia A., DPM

Nixon, Brent P., DPM

After the Board reviewed the renewal applications, a motion was made by M. Elizabeth Miles, seconded by Dr. Joseph Leonetti and passed unanimously to approve the doctors' 2016 license renewals and dispensing registrations, if applicable.

#### **EXECUTIVE DIRECTOR'S REPORT**

The Board started to review and discuss the budget, agency operations and complaint log with Ryan P. Edmonson.

*The Board took a break from 12:58 p.m. to 1:14 p.m. due to a mandatory building fire alarm drill.*

#### **EXECUTIVE DIRECTOR'S REPORT**

The Board finished reviewing and discussing the budget, agency operations and complaint log with Ryan P. Edmonson.

A motion was made by M. Elizabeth Miles, seconded by John Rhodes and passed unanimously to delegate the authority to the Executive Director to administer and proctor its licensing exam.

#### **DISCUSSION AND POSSIBLE ACTION REGARDING CURRENT EVENTS**

The Board discussed Dr. Jerome Cohn's resignation as a Board Investigator. The Board thanked Dr. Cohn for all his contributions not only to the podiatry profession, but also, specifically to the Board and its operations.

#### **CALL TO THE PUBLIC**

No one from the public was present.

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

No new conflicts were declared.

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

None were discussed.

#### **NEXT BOARD MEETING DATE**

Wednesday, May 11, 2016 at 8:30 a.m.

#### **ADJOURNMENT**

A motion was made by Dr. Barbara Campbell, seconded by Dr. Joseph Leonetti and passed unanimously to adjourn at 2:08 p.m.