



Douglas A. Ducey,
Governor

Arizona State Board of
Podiatry Examiners
“Protecting the Public’s Health”

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OPEN SESSION MINUTES

November 8, 2017

Members of the Arizona State Board of Podiatry Examiners (“Board”) held a meeting at 8:52 a.m. on Wednesday, November 8, 2017 at the Board’s office in Suite B-1, 1400 West Washington Street, Phoenix, Arizona 85007. Executive session was held from 10:24 a.m. to 10:31 a.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
- ✓ Absent

STAFF AND ASSISTANT ATTORNEY GENERAL PRESENT:

- Kristina C. Gomez Executive Director
- Ryan P. Edmonson..... Executive Director (former)
- Marc H. Harris, Esq. Assistant Attorney General

GUEST(S) PRESENT AND/OR PARTICIPATING

- Jerome A. Cohn, DPM..... Board’s Investigator
- Kevin O’Brien, DPM Respondent
- Kimberly Kent, RN, Esq..... Respondents’ Attorney

OPEN SESSION

The meeting was called to order at 8:52 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.

REVIEW, DISCUSSION AND POSSIBLE ACTION ON BOARD MEETING MINUTES

Discussion and approval of the Open Session Minutes from the October 11, 2017 board meeting
After making an amendment, a motion was made by Dr. Barry Kaplan, seconded by Ms. Lynn Hamilton and passed unanimously to approve the Open Session Minutes from the October 11, 2017, board meeting as amended.

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in alternative format upon request.

Discussion and approval of the Executive Session Minutes from the October 11, 2017 board meeting

A motion was made by Dr. Barry Kaplan, seconded by Mr. John Rhodes and passed unanimously to approve the Executive Session Minutes from the October 11, 2017, board meeting as written.

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Issuance of Licenses – A.R.S. § 32-826

Abdelmessieh, George, DPM

Sauciuc, Vlad, DPM

Garcia, David, DPM

Schmidt, James, DPM

Goss, Keith, DPM

Zafar, Hammad, DPM

Holmes, Colby

Zargar, Alireza, DPM

Rex, Brian, DPM

After review of the applications, a motion was made by Dr. Barbara Campbell, seconded by Dr. Barry Kaplan and passed unanimously to accept the following applicants to sit for the podiatry exam.

Brandon, Lorin, DPM

Dr. Lorin Brandon decided not to go further with his application, and withdrew from the process.

Kiddy, Daniel, DPM

After review and discussion of Dr. Daniel Kiddy's application. A motion was made by Dr. Barry Kaplan seconded by Mr. John Rhodes and passed unanimously to accept Dr. Kiddy's application for the examination.

Lau, Kim, DPM

After a discussion regarding Dr. Kim Lau's application and missing material. Dr. Barry Kaplan made a motion, seconded by Ms. Lynn Hamilton to have staff obtain all necessary materials that were supposed to be submitted with his application and to continue the matter for further information. Dr. Kaplan instructed staff to send Dr. Lau a letter requesting the missing material and send the information back to the Board. The Board can then make a determination based upon what information he provides on whether he meets the qualification for the next exam in June 2018.

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

Haag, Cheryl, DPM

The Board reviewed and discussed the volunteer application for Dr. Cheryl Haag. After a discussion regarding the volunteer application, Dr. Barry Kaplan made a motion, seconded by Mr. John Rhodes and passed unanimously the volunteer application for Dr. Cheryl Haag.

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Investigation File(s)

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

Dr. Kevin O'Brien was present with his legal counsel, Kimberly Kent, Esq. Review of investigation file and proposed settlement offer. Ryan Edmonson summarized the matter and the proposed settlement agreement for the Board to review, discuss, and take possible action. This was a matter from last month's Board meeting. The matter before the Board has nothing to do

with the informal hearing, which would be agenda item E. If the Board were to agree with the settlement, then the hearing would be unnecessary. Marc H. Harris, Esq. explained that the signed consent agreement presented to the Board was for their consideration.

Dr. Barbara Campbell stated that at the last meeting, the Board requested documents and never received those. Ryan stated there was some discussion of the exchange of information. Ms. Lynn Hamilton reviewed her notes from last month and listed the requested information: consents, x-rays, letters, and data on the old cases.

Ms. Kimberly Kent, Esq., explained the question regarding exchange of information that the Board did not receive. Ms. Kent viewed this as a settlement conference with Ms. Frankie Shinn-Eckberg, Esq., and she believed this would take a lot of money, time and resources for all parties involved. This view was a settlement or compromise of those pending requests. That was the understanding between Ms. Kent and Ms. Shinn-Eckberg. The finding of fact address the multiple cases of some conclusory for positions and what the investigator report found. In the settlement, Dr. Kevin O'Brien agreed to a minimum three-year practice restriction. The agreement outlines what he can and cannot perform. There is education requirements, Dr. O'Brien would need to seek Board approval to perform additional services. The Board has the discretion to determine if Dr. O'Brien is competent to do those services. The terms of probation will continue in order to allow the Board additional time to ensure Dr. O'Brien is providing those services in accordance with the minimal standards.

Ms. Kimberly Kent, Esq., stated that this is a sad day for her because the community is losing a surgeon where there are no surgeons. It is a compromise and an acknowledgment of the Board's concerns.

Dr. Barbara Campbell asked what the original settlement was that Ms. Frankie Shinn-Eckbert, Esq., presented. It was 10 years, Ms. Kent proposed 3 years, and after multiple discussions, they agreed to the terms in the proposed settlement. Ms. Kimberly Kent, Esq., stated that its clear Dr. O'Brien would not be allowed to perform any surgeries until the Board allows it. Dr. O'Brien has no intention at this time to request a lift of the restrictions. Dr. Campbell was concern that in the past there was training with charting and patient evaluation, and surgical evaluation. Now, the Board is going through the same process as before related to the previous discipline. Dr. Campbell would like to see someone different involved, in this situation. Marc H. Harris, Esq stated that Ms. Shinn-Eckbert believed that this was a good resolution to the matter.

Dr. Barry Kaplan, asked Dr. Kevin O'Brien if he would notify the hospitals and surgery centers of this matter or does that come from the Board. Ryan stated that any report of discipline is required to report to the National Practitioner Data Bank, and they will notify the hospitals and surgery centers. Dr. Kaplan stated that the unrestricted procedures seem to cover everything as well as the surgery restrictions, so it appears to be a favorable document.

Ms. Lynn Hamilton stated she does not want to see a situation where there is hairsplitting related to what is surgery, or what is an office procedure. She stated that the board had a problem with the doctor providing care in a more casual setting, his office as oppose to a hospital setting. Ms. Hamilton wants it to be clear that when the Board says Dr. O'Brien is restricted to surgery, this would include providing various services in an office setting even though it was not technically in

a hospital; he would not be allowed to do that. Mr. Harris addressed Ms. Hamilton's concern that if there is any noncompliance then he shall immediately surrender his license to the Board. Kimberly Kent, Esq., stated that if it is not on the appendix then Dr. Kevin O'Brien cannot perform it.

A motion was made by Dr. Barry Kaplan and seconded by Mr. John Rhodes to accept the proposed settlement agreement with Dr. Kevin O'Brien. The motion passed 3 – 1 by the following roll call vote:

Dr. Barbara Campbell – Aye
Dr. Barry Kaplan – Aye
Mr. John Rhodes – Aye
Ms. Lynn Hamilton - No
Dr. Joseph Leonetti – Absent

Dr. Kevin O'Brien thanked the Board and apologized for the matter.

The Board took a break from 9:31 a.m. to 9:38 a.m.

17-26-C; Dahukey, Amram, DPM

The Board received a complaint against Dr. Amram Dahukey for concerns of removing a toenail with long lasting pain and side effects. The Board's concern was the assistant performed the service on the complainant. The doctor cannot bill for this if the assistant performed the service.

After discussing the matter, Dr. Barry Kaplan asked staff to send a letter to the podiatrist that if the assistant trims the patients' nails, the doctor cannot bill for it. A motion was made by Dr. Kaplan, seconded by Ms. Lynn Hamilton to dismiss this case with a letter of concern and passed unanimously.

17-17-C; Levin, Bruce, DPM

EB alleges that treatment provided by Dr. Levin included more than 9 cortisone injections over the course of treatment with Dr. Levin. She states that she researched and was told by Dr. Kroleski (treating podiatrist after Dr. Levin) she should have received no more than 3. This treatment resulted in complications including calcification and the need for surgery.

This is an update regarding the matter. Mr. Ryan Edmonson indicated that Dr. Jerome Cohn has not been able to complete the audit. Dr. Cohn believes he now has what the Board requested after speaking to billing. He now will have to go through 60 charts and records, and is hoping to have a completed report in January. This is a tentative date.

18-11-B; Hall, Hugh Ryan, DPM

According to the notice of dismissal, plaintiffs hereby give notice that they dismiss with prejudice their complaint and all causes of action against defendants in this civil action, each party to bear their own fees and costs.

Dr. Barbara Campbell made a motion, seconded by Ms. Lynn Hamilton and passed unanimously to instruct staff to request information from Dr. Hugh Ryan Hall regarding the final disposition of the case and all associated documentation.

Unauthorized Practice of Podiatry – A.R.S. §§ 32-851 & 32-855

Brown, Jon David, DPM

Board to review, discuss and take possible action regarding the unauthorized practice of podiatry.

Dr. Barry Kaplan praised the doctor who made the complaint because in our state statute that is what a doctor is supposed to do, according to A.R.S. § 32-852.01.

Marc Harris, Esq., stated that he would ask Ms. Frankie Shinn-Eckbert, Esq. to provide further information and an update to the Board whenever the information is available. Mr. Harris suggested for administrative purposes to open a case.

The Board discussed going into executive session to discuss the above matter.

EXECUTIVE SESSION

A motion was made by Dr. Barry Kaplan, seconded by Mr. John Rhodes and passed unanimously to go into executive session at 10:24 a.m. to seek legal advice pursuant to A.R.S. § 38-431.03(A)(3) regarding unauthorized practice of podiatry.

After consideration in executive session, the Board reconvened in open session at 10:31 a.m.

OPEN SESSION

ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

Unauthorized Practice of Podiatry – A.R.S. §§ 32-851 & 32-855

Brown, Jon David, DPM

Staff review Dr. Jon David Brown's license in Idaho, and discovered he was disciplined and paid a civil penalty of \$500 dollars, paid investigated costs of \$1,300 dollars, and other stuff stipulated if he did not cooperate.

Dr. Barbara Campbell addressed the issue of Dr. Jon David Brown prescribing activity, given on 8/3/17, after his license was surrendered on July 31 of 2017. Per the consent agreement with the Board, Dr. Brown may have potentially violated his consent agreement.

A motion was made by Ms. Lynn Hamilton, seconded by Dr. Barbara Campbell to open an administrative complaint, send a letter to Dr. Brown asking him to respond to why it appears from the report that he wrote a prescription after his license was surrendered, and subpoena the information from Walgreens (WALG – 3212, prescription # 1805241).

EXECUTIVE DIRECTOR'S REPORT

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

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, December 13, 2017 at 8:30 a.m.

ADJOURNMENT

A motion was made by Dr. Barbara Campbell, seconded by Mr. John Rhodes and passed unanimously to adjourn at 11:10 a.m.