



Janice K. Brewer,
Governor

State Of Arizona Board of Podiatry Examiners

"Protecting the Public's Health"

1400 W. Washington, Ste. 230, Phoenix, AZ 85007; (602) 542-3095; Fax: 542-3093
Barry Kaplan, DPM; Joseph Leonetti, DPM; Dedrie Polakof, DPM; Paula Hollins, Public Member;
Jeanne Reagan, Public Member, Sarah Penttinen, Executive Director

TELECONFERENCE BOARD MEETING MINUTES

April 27, 2009, 12:15 p.m.
1400 West Washington St., Ste. 230
Phoenix, AZ 85007

Board Members: Joseph Leonetti, D.P.M., President
Dedrie Polakof, D.P.M., Member
Barry Kaplan, D.P.M., Member
Jeanne Reagan, Secretary-Treasurer
Paula Hollins, Public Representative

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

The Agenda for the meeting is as follows:

I. Call to Order

Dr. Leonetti called the meeting to order at 12:15 p.m.

II. Roll Call

Dr. Leonetti acknowledged his presence by phone. Also present by phone were Dr. Kaplan, Dr. Polakof and Ms. Reagan. Ms. Hollins was present in the Board's office with Ms. Penttinen and Ms. Verstegen.

III. Review, Discussion and Possible Action –Review of Complaints

a. 09-17-B – J. David Brown: Alleged habitual intemperance in the use of alcohol.

Dr. Brown was present with attorneys Bruce Crawford, Brenda Maloney and Hector Diaz. Ms. Penttinen summarized the complaint and investigation as follows: An anonymous message was left on Ms. Penttinen's voice mail on April 19, 2009 which she retrieved on April 20. The complaint alleged that Dr. Brown had been treated at Chandler Regional Medical Center in Chandler, Arizona while in police custody on April 16, 2009 following a DUI accident. The complainant also alleged Dr. Brown had open containers of alcohol in his car as well as a large amount of ammunition which was referred to ATF. Ms. Penttinen clarified that she did not find any information in the course of her investigation in reference to the open containers or ammunition and that her findings were limited to the details surrounding the alleged DUI.

Ms. Penttinen reviewed the information she obtained from Chandler Police Department which confirms that Dr. Brown was involved in a single-vehicle accident on April 16, 2009. There are two police reports which Ms. Penttinen has obtained with the exception of the police's blood tests which are pending. She noted that the police department's blood sample was drawn by hospital personnel at the same time the hospital labs were drawn so the result is expected to be extremely similar. Chandler Fire Department records show that Dr. Brown was found incoherent and disoriented and admitted consuming an unknown amount of alcohol. He was transported by ambulance to Chandler

Regional Medical Center where he was treated in the emergency department and diagnosed with "alcohol intoxication" following the hospital's blood tests which showed his blood alcohol content to be 0.380 percent. The emergency department report was completed by Dr. Paul McHale and opined that Dr. Brown obviously consumed alcohol on a regular basis due to the fact that he could speak and converse with a blood alcohol level of 0.380 percent. Ms. Penttinen also summarized her telephone discussion with Dr. Brown on April 21 in which he acknowledged being involved in a car accident on April 16 and admitted he had been consuming alcohol. Dr. Brown also admitted to Ms. Penttinen that he had taken prescription anti-anxiety medication earlier that day prior to drinking alcohol. Ms. Penttinen summarized that the allegations, which include engaging in conduct which disqualifies Dr. Brown to practice podiatry with regard to the safety and welfare of the public, (A.R.S. §32-852(5)), and habitual intemperance in the use of alcohol, (A.R.S. §32-854.01(12)), were substantiated in her opinion and aggravated by Dr. Brown's admission of combining anti-anxiety medication with alcohol. The Board members did not ask any questions of Ms. Penttinen.

Mr. Crawford spoke on behalf of Dr. Brown. He pointed out that the Board's notice letter to Dr. Brown advising of the complaint investigation included only the habitual intemperance allegation and not the second allegation. He stated that this matter is in the early stages but acknowledged that the Board has a legitimate concern with regard to public safety. He asserted that there is no evidence of Dr. Brown's "habitual intemperance" of alcohol and that the DUI, while stupid, is a one-time offense. Mr. Crawford said the emergency room physician's comments do not prove intemperance. Mr. Crawford stated again that the Board has a legitimate concern as to whether Dr. Brown has a problem or not and suggested Dr. Brown be evaluated by Dr. (Michel) Sucher who previously conducted a substance abuse evaluation on Dr. Brown. He stated Dr. Brown was willing to undergo such an evaluation to determine if he is safe to practice. The Board did not ask any questions of Dr. Brown or Mr. Crawford.

The Board asked Ms. Penttinen if there was a staff recommendation in this matter. Ms. Penttinen reviewed Mr. Crawford's statements regarding the Board having a legitimate cause for concern. She summarized that the blood alcohol test results and Dr. Brown's admission of combining alcohol with prescription anti-anxiety medication shows extremely poor judgment and demonstrates that Dr. Brown poses an eminent danger to public health, safety and welfare. She recommended that the Board find in favor of a Finding of Public Emergency and issue an Order of Summary Suspension of Dr. Brown's license pending a formal hearing through the Office of Administrative Hearings for revocation or other disciplinary action. Ms. Penttinen also asked the Board to consider offering Dr. Brown the possibility of vacating such a hearing if he were to accept a voluntary disciplinary agreement subject to the following terms and conditions:

- Obtain comprehensive substance abuse evaluation by Board approved addition medicine specialist.
- Suspension continued until that evaluation is done and return to practice only after that specialist provides written verification that he is safe to practice.
- Once suspension is lifted, 5 years probation begins.
- All suspension and probation time is subject to:
 - Compliance with all recommendations for treatment, relapse prevention and aftercare made as a result of the substance abuse evaluation
 - Complete abstinence from alcohol, poppy seeds, illegal substances and any controlled substance not prescribed to him for a bona-fide illness or medical condition.
 - Participation in NA, AA or 12-step program at least 3 times / week.
 - Random witnessed biological fluid testing, including ethylglucuronide testing.
 - Be available for interviews with the Board or Executive Director upon reasonable notice.
 - Execute all necessary release of information forms as may be required by the Board or Board staff.
 - Bear all costs.
 - Provide written quarterly reports of status of any criminal charges / convictions / plea agreement and proof of completion of any sentencing requirements.

MOTION: Dr. Leonetti moved to accept the staff recommendation for the summary suspension of Dr. Brown's license as stated. Ms. Reagan seconded the motion.

Upon discussion, it was clarified that the motion includes offering Dr. Brown the voluntary disciplinary agreement as summarized by Ms. Penttinen.

VOTE: The motion passed unanimously by roll-call vote.

Following the vote, the Board authorized Ms. Penttinen to execute the Finding of Public Emergency and Order of Summary Suspension on the Board's behalf. Following that, Mr. Crawford asked Dr. Leonetti if Dr. Brown would be allowed to be present in his office to work in a business or practice management capacity as long as he is not providing patient care or supervising such. Dr. Leonetti stated he could do so but that it would be getting into a grey area; if patients or other see Dr. Brown in his office it may raise questions as to whether he is actually practicing. Dr. Leonetti said it is Dr. Brown's decision if he wishes to do that. There was no further discussion.

IV. Call To The Public

There were no requests to speak during the Call to the Public.

V. Adjournment

There being no further business before the Board, the meeting was adjourned at 12:45 p.m.