



Janice K. Brewer,  
Governor

## State Of Arizona Board of Podiatry Examiners

"Protecting the Public's Health"

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Barry Kaplan, DPM; Joseph Leonetti, DPM; Dedrie Polakof, DPM;  
Jeanne Reagan, Public Member; Jose Villanueva, Public Member; Sarah Penttinen, Executive Director

### **BOARD MEETING MINUTES**

August 12, 2009, 8:30 a.m.  
1400 West Washington St., B1  
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  
Jose Villanueva, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

#### **I. Call to Order**

Dr. Leonetti called the meeting to order at 8:32 a.m.

#### **II. Introduction of New Public Board Member**

Dr. Leonetti introduced Jose Villanueva as the recently-appointed Public Member of the Board.

#### **III. Roll Call**

Dr. Leonetti noted for the record that he, Dr. Kaplan, Dr. Polakof and Mr. Villanueva were present. Ms. Reagan was absent.

#### **IV. Approval of Minutes**

a. July 8, 2009 Regular Session Minutes.

MOTION: Dr. Kaplan moved to accept the minutes as written. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The vote passed unanimously by voice vote.

Following the approval of minutes Dr. Polakof departed due to a family emergency and was absent for the remainder of the meeting.

#### **V. Review, Discussion and Possible Action –Review of Complaints (NOTE: The subject matter listed for each agenda item represents the allegation(s) being investigated. The presence of allegations does not automatically indicate violation of Statute or Rule in connection with the practice of podiatry.)**

a. 09-26-B – Melanie Violand: Dispensing drugs and/or devices without a valid dispensing registration.

Dr. Violand was present with attorney Bruce Crawford. Ms. Penttinen summarized this case with the allegation that Dr. Violand had been dispensing drugs and/or devices in her office without a dispensing registration issued by the Board. She stated that Dr. Violand obtained her initial dispensing registration in 2007 but did not renew it in 2008. In a telephone call with Ms. Penttinen and in her written response to the investigation, Dr. Violand stated her failure to renew her dispensing registration was an oversight and admitted that she had been dispensing devices in her office over the last year. Dr. Violand has not had any previous disciplinary actions or Letters of Concern from the Board.

Dr. Violand addressed the Board and stated that she overlooked her dispensing registration last year when she submitted her license renewal application. Dr. Leonetti asked Dr. Violand what she dispenses in her office and she said durable medical equipment such as orthotics and night splints.

**MOTION:** Dr. Leonetti moved to dismiss this matter with a Letter of Concern. Dr. Kaplan seconded the motion. There was no discussion.

**VOTE:** The motion passed by voice vote.

**VI. Status Updates: No Board Action – Information Only**

a. 07-28-C – Kent Peterson: Monthly status update.

Attorney Ed Gaines appeared on Dr. Peterson's behalf and addressed the Board. He explained that his client is still in settlement negotiations with the U.S. Attorney and they expect resolution in the near future. He will continue to provide monthly updates to the Board.

b. Status of appeal filed by Dr. Gaveck in case number 06-04-C.

Ms. Verstegen informed the Board that this matter is still under advisement with the Court of Appeals.

**VII. Review, Discussion and Possible Action – Probation / Disciplinary Action Status Reports**

a. 06-04-C – Alan Gaveck: Monthly update.

Dr. Leonetti discussed the status of Dr. Gaveck's probation and correspondence Ms. Penttinen sent to Dr. Gaveck's attorney Bruce Crawford regarding the need to specifically request that the probation be terminated. Ms. Penttinen advised that she has not received any response from Mr. Crawford. Dr. Leonetti confirmed with Ms. Verstegen that the probation will continue until such a request is received and approved by the Board.

b. 08-03-C – Elaine Shapiro: Probation compliance interview with the Board.

Dr. Shapiro was present with her attorney Ed Gaines. Dr. Leonetti and Ms. Penttinen asked Dr. Shapiro several questions regarding her recovery status and current practice. Dr. Shapiro stated she is attending both AA and NA meetings, a total of three times per week, and also hosts a Caduceus meeting (recovery meeting for physicians and other healthcare professionals) at her office once per week. She also attends relapse-prevention meetings once per week. She is subject to random drug testing and has been tested approximately three to four times per month. She speaks with Dr. Sucher or his office staff about once per week and speaks with her 12-step sponsor every couple days. Her sobriety date is July 22, 2008. Dr. Leonetti asked Dr. Shapiro how she is managing her chronic pain issues. Dr. Shapiro stated she had undergone some electro-therapy while in treatment last fall and currently only takes Aleve, no prescription pain medicine. Dr. Leonetti asked about the status of her practice and hospital staff memberships. Dr. Shapiro stated her practice is going very well. Several insurance companies have allowed her to begin participating again. She does not have staff membership privileges at any hospitals or surgical centers so she is not able to perform any surgeries at this time. She has submitted membership applications at four facilities but has not received a response yet. She believes this may be due to her previous license suspension, current probation status, or action previously taken by Northwest Medical Center. Drs. Kaplan and Leonetti remarked that Dr. Shapiro appears to be doing well physically. Ms. Penttinen advised that the most recent update from Dr. Sucher confirms that Dr. Shapiro is in compliance with his monitoring program and is working a strong recovery program. Dr. Leonetti told Dr. Shapiro that no action needs to be taken at this time and she will be advised when/if the Board wishes to see her again for another probation interview.

c. 08-18-C – David Laurino: Monthly update.

Ms. Penttinen advised that she had received July records from Dr. Laurino and provided them to Dr. Leonetti today. Dr. Leonetti advised that he has reviewed Dr. Laurino's records for April, May and June of this year and has found no problems or issues.

**VIII. Review, Discussion and Possible Action on Administrative Matters**

a. Kevin O'Brien, DPM: Report of malpractice claim dismissed with prejudice.

Drs. Kaplan and Leonetti discussed this PICA notification with Ms. Penttinen and Ms. Verstegen, specifically that the malpractice action was dismissed with prejudice and the amount of the settlement was \$0. The Board directed Ms. Penttinen to file this information in Dr. O'Brien's license file but there is no need to open a complaint investigation unless the patient files a complaint directly with the Board.

b. Class Action lawsuit brought by Daisy Mountain Fire District vs. Microsoft Corporation.

Ms. Penttinen explained that the fire district filed a class action suit on behalf of all Arizona government entities in relation to alleged overcharging by Microsoft for software purchases dating back to the mid 1990's. Ms. Penttinen stated the settlement amount is being divided among the class by FTE's. Having one FTE, our Board would receive \$10.18. However, it is not a cash settlement; the money would be given as a credit toward future Microsoft software purchases.

MOTION: Dr. Kaplan moved to withdraw from the class action lawsuit. Dr. Leonetti seconded the motion. There was no discussion.

VOTE: The motion passed by voice vote.

c. Approval of written procedure for postponements of investigative or informal interviews.

Dr. Leonetti reviewed the procedure which Ms. Penttinen explained was modeled after the example of the Dental Board's policy as provided by the Ombudsman's Office. There was discussion as to what would happen if the Board President was on vacation or otherwise unavailable.

MOTION: Dr. Leonetti moved to accept the written policy with one change to reflect that the executive Director will notify the Board President of a postponement request, or the acting President if the President is not available. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed by voice vote.

d. Discussion on whether or not to open investigation cases on Drs. Jerome Cohn and Brian Neerings due to PICA report of a patient request for compensation for "mental and emotional aggravation."

The Board members discussed with Ms. Penttinen that this matter involves the same patient and the same circumstances as the PICA reports which they reviewed during the May 2009 Board meeting for Drs. Paul Daines and Jess Price. All four physicians work in the same office and Dr. Daines had been the patient's physician prior to moving out of state. None of the other physicians have ever treated the patient. The Board members directed Ms. Penttinen to file the PICA reports in the respective license files and no complaint investigations will be opened on Drs. Cohn or Neerings unless the patient files a complaint directly with the Board.

e. New License Applicants

- i. Kimberly Akkerman
- ii. Ryan Fitzgerald (held over from June 2009 oral exam)
- iii. Darick Freestone
- iv. Jonathan King
- v. Marie Paul

**MOTION:** Dr. Kaplan moved to approve Dr. King's application as complete, and Dr. Fitzgerald, whose application is held over from the June 2009 exam, also is complete. Dr. Leonetti seconded the motion. There was no discussion.

**VOTE:** The motion passed by voice vote.

The remaining applications have deficiencies and will be returned to the Board at the September 2009 Board meeting for additional review.

- f. 08-47-B – Antonius Su: Receipt of signed Consent Agreement from Dr. Su with one requested amendment.
- g. 08-18-C – David Laurino: Request to amend Consent Agreement already entered into with the Board.

Agenda items VIII(f) & (g) were reviewed and discussed simultaneously. Attorney Bruce Crawford was present on behalf of Drs. Su and Laurino who were not present. The Board is in receipt of the signed consent agreement from Dr. Su and it was executed by Dr. Leonetti. The Board then reviewed the requests to amend the doctors' consent agreements to change the monthly due date to submit records from the 5<sup>th</sup> to the 15<sup>th</sup> of each month. In discussion Ms. Penttinen pointed out that receiving records on the 15<sup>th</sup>, which is after the monthly Board meetings, may cause a delay in review of those records and therefore a delay in conclusion of the respective probation periods. Mr. Crawford stated he had no issue with that. He also stated the reason for the request is that the doctors are having difficulty obtaining billing records from their out-sourced billing company by the 5<sup>th</sup> of the month. Dr. Leonetti discussed with Ms. Versteegen the process of creating an amendment to the consent agreements.

**MOTION:** Dr. Leonetti moved to approve the requested change for both Dr. Laurino's and Dr. Su's consent agreements. Dr. Kaplan seconded the motion.

**VOTE:** The motion passed by voice vote.

Following the vote Dr. Leonetti delegated authority to Ms. Penttinen to execute the consent agreement amendments on the Board's behalf.

## **IX. Executive Director's Report**

- a. Open complaint status report.

Ms. Penttinen advised that she has had a problem with getting the database to generate the open complaint status report. She will forward to the Board members by email as soon as possible.

- b. Status of contact with FDA regarding use of lasers in podiatric care.

The Board reviewed the email Ms. Penttinen received from Mr. Ulatowski at the FDA stating he was looking into our request. Mr. Villanueva asked what was causing such a delay. Ms. Penttinen advised that the FDA's Radiologic health branch has been in the process of a major geographical move over the last few months. Dr. Leonetti stated that because this is a Board inquiry, and there has not been a specific complaint about laser use, we will continue to await FDA's response as they are able to provide it.

- c. Closure of Ombudsman's complaint investigation.

Ms. Penttinen reviewed with the Board the July 2, 2009 letter she received from the Ombudsman's office which indicates they have closed their investigation and will take no action at this time. Ms. Penttinen explained that in her discussions with Ombudsman staff they seem to be quite pleased with the Board's progress in improving investigation and documentation procedures.

d. Auditor General's six-month report to the Joint Legislative Audit Committee.

Drs. Leonetti and Kaplan discussed the Auditor General's findings in their report dated July 10, 2009 which indicates that a majority of the Auditor's recommendations have been implemented at six months. One recommendation is in process and three have not yet been implemented. Ms. Penttinen explained that those 4 outstanding items should be relatively easy to implement and only involve developing a written policy for items the Board has already reviewed including public information guidance and records retention. Dr. Leonetti suggested that Ms. Penttinen forward a copy of the report to Rep. Nancy Barto to keep her updated with the Board's progress because she sponsored the Board's continuation bill.

## X. Review Discussion and Possible Action on License Renewal Applications

MOTION: Dr. Leonetti moved, and Dr. Kaplan seconded the motion, to approve the following applications as complete:

Brian Allen	Michael Dershowitz	David Jenkins	Ron Olsen
Gary Almas	John DiMaggio	Matthew Jones	Tawnya Pfitzer
Barbara Aung	Carlos Dimidjian	Sanford Kaner	Jess Price
Steven Axt	Joseph Domanico	Paul Keller	Deo Rampertab
Carl Beecroft	Peyman Elison	Paul Kim	Joyce Ratner
Mary Benjamin-Swonger	Viedra Elison	Anthony Kimball	H. William Reese
Rodney Berkey	Susan Errdege	Alan Kravitz	Jeffrey Resnick
David Berman	Michael Esber	Adam Kruczay	Terrance Roach
Douglas Birch	Albert Eulano	David Laurino	Laurel Robison
Kenneth Blocher	Robert Evans	David Lee	Michael Rosenblum
Erich Bock	Michael Farkas	James Longton	Kenneth Rowe
Raymond Bock	John Ferguson	Gregory Loo	David Savage
Raymond Botte	Barton Fink	Andrew Lowy	Susan Scott
Jason Bowen	Edward Flake	Adam Lu	Michael Sekosky
Catherine Brigandi	Christopher Funk	Cindy Mann	James Shoffer
William Burke	Stephen Geller	Steven Mann	Jerome Steck
Steven Burns	Joseph Gelling	Neil Mansdorf	James Stocker
John Chiakmakis	Parker Gennett	Cameron McKay	Robert Taylor
Robert Chiarello	Eugene Goldman	Ivan McLaws	Thomas Troy
Donald Chudy	Ike Gorman	Lois Miller	Terence Thompson
Luke Cicchinelli	Hugh Hall	Pierre Momjian	Tharesh Udupa
Douglas Cohen	Jarrett Hamilton	Richard Mott	Jeffrey Weiss
Samuel Cox	Daniel Hsu	Robin Myers	Bradley Whitaker
Kelvin Crezee	Brian Hutcheson	Katherine Neiderer	Lance Wissman
	Richard Jacoby	John Oknaian	Robert Zachow

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Leonetti moved, and Dr. Kaplan seconded the motion, to approve the following applications pending correction of the noted deficiencies:

Mark Barinque – Application fee and late fee.  
Vivian Benson – Business address, proof of citizenship, clarification of legal name, late fee.  
Janet Black – Proof of citizenship, late fee.  
Ana Burns – Copy of DEA certificate (for dispensing registration).  
Dean Clement – Copy of DEA certificate (for dispensing registration).  
Laureen Cota – Proof of citizenship, late fee.  
Jeff Kleis – Late fee.  
Stefan Mudryj – Late fee.  
Richard Quint – Proof of citizenship, incomplete application, late fee.  
J. Barton Ripperger – Proof of citizenship, late fee.  
Payam Sarraf – Continuing medical education.  
Edward Scates – Continuing medical education.  
Arthur Seidner – Continuing medical education.  
Martin Smith – Late fee.  
Loren Wessel – Continuing medical education.  
James Wilson – Application fee and late fee.  
Arnold Wolf – Late fee.

VOTE: The motion passed unanimously by voice vote.

## XI. Call To The Public

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

**XII. Next Board Meeting Date:**

- a. September 9, 2009, 8:30 am.

**XIII. Adjournment**

There being no other business before the Board the meeting was adjourned at 10:42 a.m.