



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;  
Jeanne Reagan, Public Member; Jose Villanueva, Public Member; Sarah Penttinen, Executive Director

**BOARD MEETING MINUTES**

October 14, 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 8:43 a.m.

**II. Roll Call**

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

**III. Approval of Minutes**

a. September 9, 2009 Regular Session Minutes.

MOTION: Ms. Reagan moved to accept the minutes as written. Dr. Polakof seconded the motion. There was brief discussion from Dr. Kaplan regarding item number VIII with Dr. Don Shumway's renewal application and his CME. Ms. Penttinen confirmed that Dr. Shumway has not completed all required CME but is still within the time period allowed to him by the Board.

VOTE: The motion passed unanimously by voice vote.

b. September 9, 2009 Executive Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

**IV. Informal Interviews: Time-specific agenda items.** The Board will conduct an Informal Interview and also review, discuss and possibly take action on the following matters:

a. 09-02-C – J. David Brown: Alleged improper surgery. (8:30 a.m.)

This matter was called at 8:36 a.m. Dr. Leonetti recused himself as he was the Physician Investigator for this case. Dr. Brown was present with attorney Peter Kline who confirmed that Dr. Brown had declined the Board's invitation to participate in the Informal Interview. Dr. Leonetti provided a brief summary of his findings. Dr. Polakof and Ms. Reagan discussed with Dr. Leonetti the joint fusion devices and techniques that were used on the patient and the outcomes of both Dr. Brown's surgery and the subsequent surgery performed by another physician.

**MOTION:** Dr. Polakof moved to offer Dr. Brown a consent agreement for violation of A.R.S. §32-854.01(20). Dr. Kaplan requested to amend the motion to include in the consent agreement probation for a period of six month during which time Dr. Brown would be required to submit to the Board complete patient records for any fixation hardware or fusion surgeries he performs. Dr. Polakof agreed to the amendment. Ms. Reagan seconded the motion. Upon discussion the Board directed staff to refer the case to a formal hearing through the Office of Administrative Hearings in the event Dr. Brown does not accept the consent agreement.

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

b. 09-14-C – J. David Brown: Alleged overcharging for durable medical equipment. (9:00 a.m.)

This matter was called at 9:04 a.m. Dr. Kaplan recused himself as he was the Physician Investigator for this case. Dr. Brown was present with attorney Peter Kline who confirmed that Dr. Brown had declined the Board's invitation to participate in the Informal Interview. The Board discussed the status of the consent agreement which they previously voted to offer Dr. Brown. Ms. Penttinen advised that she has drafted the agreement and will send it to Ms. Verstegen for review. Dr. Leonetti stated the Board will table this matter and the Informal Interview can be rescheduled if needed.

**V. Review, Discussion and Possible Action –Review of Complaints**

a. 09-28-B – Luke Cicchinelli: Dispensing drugs and/or devices without a valid dispensing registration.

Dr. Cicchinelli was not present. Dr. Leonetti discussed the facts of the case with Ms. Penttinen and confirmed that Dr. Cicchinelli admitted he had been dispensing medical devices (orthotics) without a valid dispensing registration. Dr. Leonetti stated this case is similar to several recent cases where the Board has issued a Letter of Concern. Ms. Reagan discussed with the Board members and Ms. Penttinen the process for ensuring that the all proper paperwork is completed when a physician moves to Arizona from another state.

**MOTION:** Dr. Leonetti moved to dismiss this matter with a Letter of Concern to Dr. Cicchinelli for failing to obtain a valid dispensing registration. Dr. Kaplan seconded the motion. There was no discussion,

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

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

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

Ms. Penttinen advised that she has not received an update since August 2009. The next quarterly report is due in November.

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

Ms. Verstegen advised that attorney Bruce Crawford has filed a petition for review of the Court of Appeals' decision. She will be filing a response to that petition in early November and will keep the Board informed of the status.

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

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

An update was received from attorney Bruce Crawford on October 5, 2009 indicating Dr. Gaveck performed no surgical procedures during the month of September. No request has been received to terminate the probation period.

b. 08-03-C – Elaine Shapiro: Monthly update.

Ms. Penttinen advised that there were no reports of non-compliance with Dr. Shapiro's monitoring program. The Board directed Ms. Penttinen to place this matter on the agenda for next month's Board meeting to review all consent agreement terms.

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

Dr. Laurino was not present but was represented by attorney Peter Kline. Also present was Dr. Laurino's office manager Katy Gray. Mr. Kline and Ms. Gray explained to the Board members that there was some confusion as to which specific billing records need to be submitted to the Board every month. Dr. Laurino had submitted the patient's records, EOB's and billing statements sent to the patients. Dr. Leonetti explained that the EOB's were not needed, but the doctor should be submitting copies of the superbills and HCFA-1500 forms for each patient.

**(Time-specific agenda item for 9:30 a.m.)**

d. 09-17-B – J. David Brown: Monthly update and request to return to practice.

This matter came before the Board at 9:37 a.m. Dr. Brown was present with attorney Peter Kline. Dr. Michel Sucher participated in the discussion by phone. The Board first held discussion with Dr. Sucher regarding his most recent progress report in contrast to the report previously generated immediately following Dr. Brown's discharge from the treatment facility. Dr. Brown also addressed the Board and answered questions about his actions while in the treatment facility and his progress working with Dr. Sucher since then. There was extensive discussion among the Board members, Dr. Sucher, Dr. Brown and Mr. Kline regarding Dr. Brown's medication violations while in treatment, the circumstances surrounding the initial DUI incident, Dr. Brown's progress in Dr. Sucher's monitoring program since being discharged, and the current status of his practice.

Dr. Sucher explained that when Dr. Brown was discharged there were still a number of problems which led to the treatment facility's recommendation that he not return to practice for three months. At the time of discharge Dr. Sucher believed the recommendation was reasonable but Dr. Brown has since gained a lot of insight and is working well in his recovery program. Dr. Sucher discussed with the Board his opinions about Dr. Brown's medication violations while in treatment, his current practice status and his legal status with regard to his pending DUI charges. At this time Dr. Sucher feels that allowing Dr. Brown to return to work on a part-time basis would be beneficial on many levels and would not pose a danger to public safety if he remains in a structured environment. Dr. Leonetti stated he was inclined to accept the treatment facility's initial recommendation that Dr. Brown not return to practice for 90 days but he is open to other recommendations and discussion with the other Board members. Dr. Polakof raised questions regarding how the Board could regulate Dr. Brown and ensure that he was only working part-time.

MOTION: Dr. Kaplan moved to go into Executive Session to obtain legal advice. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote and the Board went into Executive Session at 10:36 a.m.

The Board returned to Open Session at 10:50 a.m.

Dr. Leonetti discussed with Dr. Brown the status of his malpractice insurance, private insurance participation, other physicians working in his office, privileges at surgical centers and the potential stress of returning to practice. Dr. Brown stated he does not know if he will have enough business to sustain his practice but he plans to have some locum tenens physicians in his office to assist with the work flow and the transition of care for patients Dr. Maben has been treating. Mr. Kline addressed the Board and reiterated that Dr. Brown has been making a lot of progress and is being monitored in a very controlled environment through Dr. Sucher. He feels Dr. Sucher is a competent judge of recovery and stated there is no evidence of any harm caused to patients due to Dr. Brown's alcohol issues. Mr. Kline confirmed that Dr. Brown is requesting to return to practice on a part-time basis in accordance with Dr. Sucher's current recommendation. He added that Dr. Brown will not be able to establish a full-time practice for along time anyways due to all the other logistics he is working through (aside from his specific license status).

MOTION: Dr. Leonetti moved to allow Dr. Brown to return to practice effective immediately at a maximum of 20 hours per week of patient contact for a period of two months. Dr. Brown would be required to fax a weekly roster of patients to the Board's office and also submit

a copy of his current policy for the presence and security of narcotics in his office. After two months the Board will consider allowing Dr. Brown to return to practice full-time dependent upon another progress report from Dr. Sucher. Dr. Kaplan seconded the motion. There was no discussion.

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

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

#### a. Consideration of hiring volunteers or interns for administrative assistance.

Ms. Penttinen explained that with the proposed budget cut, (agenda item IX.b), she did some research and discovered that the Arizona Physical Therapy Board has a volunteer program which she believes could be easily duplicated for the Podiatry Board. She spoke with the Director of the Physical Therapy Board who provided her with copies of all their program documents and training materials which include consideration for confidentiality of agency information. Ms. Penttinen believes having volunteers would be of great assistance with administrative duties, particularly during the license renewal period each year. She also would like to investigate the possibility of offering an internship position to students in bachelors or masters degree programs in healthcare or public administration. Ms. Penttinen stated she was seeking the Board's approval to move forward with developing such a volunteer program and to contact local universities and colleges to collaborate on developing curriculum and/or objectives for an internship program. The Board advised Ms. Penttinen that she may proceed with researching the possibilities and developing a program to bring back to the Board for review at a future meeting.

#### b. Discussion on whether or not to open investigation case on Dr. Stanton Cohen due to PICA report of a patient who fell in office. (PICA claim was closed with \$0 settlement.)

The Board members reviewed the report submitted by PICA indicating that a malpractice claim had been filed against Dr. Cohen by plaintiff M.R. The claim was later withdrawn by the plaintiff with a \$0 settlement. The Board advised Ms. Penttinen that an investigation case does not need to be opened at this time. The PICA report will be retained in Dr. Cohen's license file.

#### c. New License Applicants

- i. Lisa Pallini, DPM
- ii. Richard Rand, DPM

MOTION: Dr. Leonetti moved to approve the license applications for Drs. Pallni and Rand. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

#### d. Possible administrative closure of complaint filed against Dr. Glen Robison due to lack of sufficient information from complainant.

Ms. Penttinen explained that she received a complaint against Dr. Robison from complainant J.R. but the complaint information was very vague and she could not determine the nature of the allegations. She has sent two written requests to the complainant asking for further information but has not received any response. She has not yet sent official notification of the complaint to Dr. Robison because there is insufficient information to advise the doctor of the specific allegation(s) made against him. Ms. Penttinen stated she was seeking the Board's approval to close this matter with no further action.

MOTION: Dr. Kaplan moved to dismiss this matter and take no action at this time. Dr. Polakof seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

**IX. Executive Director's Report**

a. Open complaint status report.

The Board reviewed the open complaint status report which indicates there are currently 39 open complaints.

b. 15% budget reduction mandated by Governor's office.

Ms. Penttinen explained that she received a memo via email on September 18, 2009 from the Governor's Office of Strategic Planning and Budgeting advising that all State agencies were being requested to reduce their budgets by 15%. This reduction is to go into effect in the current fiscal year and agencies were advised that they should plan on this cut being permanent. Ms. Penttinen reviewed the Board's total budget of \$144,600.00 which then requires a reduction of \$21, 690.00. The Board reviewed the reduction reports submitted by Ms. Penttinen which reflect eliminating the introduction of a part-time administrative position, eliminating funding for rules review/rule writing, and eliminating funding for the Board's contracted I.T. staff to make improvements to the agency's database and website. She expects the elimination of rules/review or rule writing to have a minimal effect since there is currently a moratorium on rules changes enacted by the Governor's office. Also, the agency's last rules review was conducted in 2008 and there have been no major changes or new problems since then. Eliminating upgrades or improvements to the agency's database and website is not expected to have a severely detrimental effect on the agency's operation; however, some improvements will still need to be made in the near future to correct minor malfunctions in the database and improve information provided to the public on the website. The largest reduction is for the administrative position which Ms. Penttinen advised could be compensated with the possible volunteer/internship program as discussed earlier in the meeting.

c. Prescription Monitoring Program implemented by the AZ Pharmacy Board.

Ms. Penttinen advised that she had received several calls from podiatrists asking about the requirements of the new Pharmacy Board monitoring program for dispensing medications. She was unaware of this program and contacted the Pharmacy Board to gather more information. She was told that it only applies to healthcare practitioners who dispense controlled substances in their offices. If a podiatrist only dispenses durable medical equipment they are not required to submit reports to the Pharmacy Board. Also, writing prescriptions is fine; the only reporting requirement is if the doctor fills the prescription in the office.

**X. Call To The Public**

There were no requests to speak during the call to the public.

**XI. Next Board Meeting Date:**

a. December 1, 2009, 8:30 am. (Note change of date from December 9 to December 1.)

**XII. Adjournment**

There being no other business before the Board the meeting was adjourned at 12:00 p.m.