



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

November 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 me meeting to order at 8:31 a.m.

II. Roll Call

Dr. Leonetti noted for the record that all Board members were present as well as Ms. Penttinen. Ms. Verstegen was not present. Dr. Leonetti noted that Assistant Attorney General Montgomery Lee was available by phone to provide legal advice if needed.

III. Approval of Minutes

a. October 14, 2009 Regular Session Minutes.

MOTION: Ms. Reagan moved to accept the minutes as written. Dr. Polakof seconded the motion. Upon discussion Dr. Leonetti noted there was a typographical error on page two of the minutes under item number IV(b) where his name had been stated redundantly toward the end of the paragraph. Ms. Reagan accepted and Dr. Polakof seconded the proposed amendment. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

b. October 14, 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. 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. 09-29-B – Adam Kruczay: Dispensing drugs and/or devices without a valid dispensing registration.

Dr. Kruczay was not present. Ms. Penttinen summarized the case which involves the allegation that Dr. Kruczay dispensed orthotics and possibly other durable medical equipment without a valid dispensing registration issued by the Board for approximately five months after moving to Arizona from another

state. Dr. Leonetti noted this is similar to other cases the Board has recently reviewed, including other physicians in the same office/practice location.

MOTION: Dr. Leonetti moved to dismiss this case with a Letter of Concern to Dr. Kruczay for dispensing without a valid dispensing registration. Dr. Kaplan seconded the motion. Upon discussion Ms. Reagan spoke briefly about whether or not the office or practice location holds any responsibility to provide direction to doctors moving here from out of state. She suggested that Board staff develop a tracking system for when a doctor submits a change of address to the Board so that a specific notification can be sent to the licensee at that time regarding the need for a separate dispensing registration. Ms. Penttinen explained that following the oral exam and issuance of a license, the standard cover letter sent to the doctor includes an advisory that if they wish to dispense drugs and/or medical devices they must apply for and receive a separate dispensing registration. There was agreement among the Board members that the applicants are given an oral examination on Arizona podiatry laws upon their application for a license and it is their responsibility to be familiar with those laws. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

V. Status Updates: No Board Action – Information Only

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

Dr. Leonetti reviewed correspondence submitted by Dr. Peterson's attorney indicating that they are still in settlement negotiations with the U.S. Attorney's Office.

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

Ms. Penttinen reviewed that Dr. Gaveck's attorney had previously filed a petition for review of the last court decision. She reported that to the best of her knowledge, Ms. Versteegen filed a response to that petition earlier this month and the matter remains under advisement with the court.

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

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

Dr. Leonetti reviewed correspondence submitted by Dr. Gaveck's attorney indicating he did not perform any surgeries during the month of October. Dr. Gaveck also has not filed a request to terminate his probation.

b. 08-03-C – Elaine Shapiro: Monthly update and review of consent agreement terms.

Ms. Penttinen reviewed the progress report submitted by Dr. Sucher dated November 5, 2009 which indicates Dr. Shapiro is in compliance with all monitoring requirements. Dr. Leonetti asked when Dr. Shapiro would need to come back before the Board for a probation interview. Ms. Penttinen advised that it was at the Board's discretion. Dr. Kaplan questioned the frequency of drug testing and whether the Board should be receiving copies of the drug test results. There was discussion among the Board members and Ms. Penttinen regarding Dr. Sucher's reporting procedures and his randomized drug testing system. The Board members instructed Ms. Penttinen to obtain from Dr. Sucher copies of Dr. Shapiro's drug test results and information regarding where she does her testing and what protocols are used at that facility.

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

Dr. Leonetti advised that he reviewed the last records received from Dr. Laurino for the month of September and there were no problems. Dr. Kaplan briefly discussed the letter that is to be sent to the insurance companies regarding Dr. Laurino's billing irregularities. Dr. Leonetti will be providing Ms. Penttinen with a list of the insurance companies that need to be notified as well as the specific billing codes which should be referenced.

d. 09-17-B – J. David Brown: Monthly update.

Ms. Penttinen advised she has not received any reports of non-compliance from Dr. Sucher. The next quarterly progress report is due in January 2010. Dr. Kaplan suggested that the Board obtain copies of

Dr. Brown's drug test results from Dr. Sucher. The other Board members were in agreement and instructed Ms. Penttinen to request that information from Dr. Sucher.

VII. Review, Discussion and Possible Action on Administrative Matters

a. CME review request from Dr. Don Shumway.

Dr. Shumway was present. Ms. Penttinen summarized the actions taken up to this point regarding Dr. Shumway's license renewal application, notification of CME deficiency, extension previously approved by the Board, and the most recent CME submission from Dr. Shumway. Dr. Leonetti addressed Dr. Shumway regarding the CME course on Genomics and asked Dr. Shumway to explain how genetics education is related to the practice of podiatry. Dr. Shumway stated he became interested in genetics because he has several family members with genetic illnesses which can sometimes cause problems with the lower extremities. Dr. Leonetti asked if Dr. Shumway had a course outline for this genomics program which Dr. Shumway did not have. Dr. Leonetti explained that this topic may have an indirect relationship to podiatry but the Board would need more information before making a final decision.

There was extensive discussion among the Board members and Dr. Shumway regarding the annual CME requirements and the breakdown of direct-instruction courses vs. online or journal review-type courses. Dr. Leonetti pointed out that regardless of the total number of hours completed, the CME must be appropriately related to the practice of podiatry. Ms. Penttinen advised the Board that upon review of Dr. Shumway's previous renewal applications it appears he has always completed appropriate CME in relation to content and format and that those previous CME hours were obtained from a wide variety of sources.

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

VOTE: The motion passed unanimously by voice vote. The Board adjourned into Executive Session at 9:25 a.m.

The Board returned to Regular Session at 9:32 a.m.

Dr. Leonetti recommended that the Board table this matter and not make a final decision as to the approval or denial of Dr. Shumway's renewal until further information is received. Dr. Shumway has submitted a new license application and is prepared to sit for the oral exam scheduled for December 1, 2009 in the event that his renewal is denied. The Board informed Dr. Shumway that his license renewal would be reviewed again at the December 1, 2009 Board meeting, (following the oral exam for new license applications), and asked that he provide more information on the genomics course for the Board members to review.

b. Review of new license applications for the following applicants:

- i. Kimberly Akkerman
- ii. Matthew Hakeman
- iii. Peter Merrill
- iv. Marie Paul
- v. Jeffrey Rager
- vi. Blair Sandall
- vii. Thomas Shields

MOTION: Dr. Leonetti moved to approve the license applications for Drs. Kimberly Akkerman and Peter Merrill. Ms. Reagan seconded the motion. There was no discussion.

VOTE: The vote passed unanimously by voice vote.

The remaining applicants have deficiencies which have not been rectified within the required time period. They remain eligible to sit for the June 2010 oral exam assuming all deficiencies are addressed.

- c. Request from Drs. Elaine Shapiro and Robin Myers to amend Board meeting minutes of March 11, 2009.

Dr. Leonetti reviewed the request submitted by Drs. Shapiro and Myers and the minutes from the March 11 Board meeting. The doctors have requested that the minutes be amended to reflect that Dr. Myers had only worked in Dr. Shapiro's office until Dr. Shapiro's license was reinstated on October 16, 2008. The Board also reviewed the terms of Dr. Shapiro's consent agreement with the Board which restricted her license for a period of six months beginning on October 16, 2008. In light of the present request and the minutes as currently written and previously approved by the Board, there is some confusion as to when Dr. Myers was working in Dr. Shapiro's office and what procedures Dr. Myers and or Dr. Shapiro were performing in that office before Dr. Shapiro's reinstatement and during the subsequent restriction period. Dr. Leonetti recommended that the Board table this matter and place on the December 1, 2009 Board meeting agenda and specifically request that Drs. Shapiro and Myers be present or available by phone to answer questions from the Board. All Board members were in agreement with that recommendation.

- d. Consideration of developing a written policy or procedure for notification of absence or illness of the Executive Director and time reporting.

Ms. Penttinen reviewed the written issue summary provided to the Board and explained that this matter came to light following her recent absence from the office for three days due to illness. At that time Dr. Leonetti suggested developing a written protocol for notifying the Board of the Executive Director's absence for regular work days and also developing a procedure in case of her absence on a Board meeting day. Dr. Leonetti stated the current procedure of notifying the Board President of an absence by phone or email is sufficient, then the President will decide how to proceed if needed. All Board members were in agreement that having a written policy/procedure would be very beneficial. Ms. Penttinen will develop the policy and bring back to the Board for review and approval.

- e. FDA standards for use of lasers to treat fungal toenail infections and associated advertising/promotion.

Ms. Penttinen reviewed with the Board the most recent information she received from the FDA this morning. That information indicates that a physician can use a laser for an "off-label" use under the concept of the practice of medicine, but the physician assumes liability for such off-label use. However, physicians may not promote or advertise this off-label use. There was discussion among the Board members and Ms. Penttinen regarding notification to all podiatrists regarding this information. Ms. Penttinen suggested that a notice be placed on the Board's website and a written notice be sent to all active licensees by regular mail. The Board members were in agreement and directed Ms. Penttinen to do so.

VIII. Executive Director's Report

- a. Open complaint status report.

Ms. Penttinen reviewed the report which indicates there are currently 34 open complaints.

- b. Consideration of providing copies of Investigation Reports to licensees being investigated at the time the case is placed on an agenda for Board review.

Ms. Penttinen reviewed the issue summary provided to the Board and discussed the recent pattern of licensees declining to participate in the Board's initial review of a complaint and any subsequent requests to participate in an Informal Hearing where the Board may impose disciplinary action. Ms. Penttinen thought that by providing a copy of the Investigation Report to the licensee at the time of the initial Board review it may alleviate some concerns of the licensees regarding the specific statutes and/or rules the Board is considering as possible violations. The licensee is legally entitled to receive a copy of the report and the entire investigation file at the time of an Informal Interview. Ms. Penttinen thought providing the report at the initial review stage may increase participation of the licensees which may allow the Board to reach a disposition in a faster time period. There was brief discussion among the Board members voicing disagreement with this suggestion. Dr. Leonetti stated the current process should be maintained and no changes should be made at this time. The remaining Board members were in agreement with that directive.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. December 1, 2009, 8:30 a.m. (following oral exams for new license applicants at 8:00 a.m.)
There was brief discussion as Ms. Penttinen had scheduled the oral exams for 8:30 and the Board meeting for 9:30. The standardized documents created by Ms. Penttinen's predecessor directed applicants to appear at 8:00 and the exams would begin at 8:30. Dr. Polakof and Ms. Reagan stated the exams should begin at 8:00. All Board members agreed that the Board meeting will begin at 8:30.

XI. Adjournment

There being no other business before the Board the meeting was adjourned at 10:34 a.m.