



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

### **BOARD MEETING MINUTES**

August 11, 2010; 8:30 a.m.  
1400 West Washington St., B1  
Phoenix, AZ 85007

Board Members: Joseph Leonetti, D.P.M, President  
Barry Kaplan, D.P.M., Member  
Barbara Campbell, D.P.M., Member  
Jose Villanueva, Secretary-Treasurer  
Jeanne Reagan, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

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

Dr. Leonetti called the meeting to order at 8:38 a.m.

#### **II. Roll Call**

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

#### **III. Approval of Minutes**

a. July 14, 2010 Regular Session Minutes.

MOTION: Ms. Reagan moved to approve the minutes with one modification to page 5 under agenda item IX to clarify that Dr. Joseph Leonetti recused himself from the votes for himself and Dr. William Leonetti. Dr. Kaplan seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. July 14, 2010 Executive Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

#### **IV. Review, Discussion and Possible Action –Review of Complaints**

a. 09-25-M – Payam Sarraf: Practice below the standard of care (tabled from June 9, 2010 meeting.)

Dr. Kaplan recused himself as he was the physician investigator for this case. Dr. Sarraf was not present. Dr. Kaplan summarized his investigation of the sole allegation of substandard care provided by Dr. Sarraf to patient B.N. Dr. Sarraf had performed bunion correction, first metatarsal-cunieform joint fusion, and posterior tibial tendon advancement with resection of the navicular tuberosity. The patient claims the bunion correction was not necessary and that the other two procedures were not necessary. Dr. Kaplan reviewed the patient's record provided by Dr. Sarraf and found no deviations in the standard of care. Dr. Kaplan also noted that the malpractice matter filed against Dr. Sarraf by this patient was voluntarily dismissed with prejudice by the patient with no monies paid. There was brief discussion among the Board members and Dr. Kaplan and agreement by the Board that Dr. Sarraf did not deviated from the acceptable standard of care.

**MOTION:** Dr. Leonetti moved to dismiss this matter finding no violations of statute. Ms. Reagan seconded the motion. There was no discussion on the motion.

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

- b. 10-15-C – Corina Hollander: Consideration of Consent Agreement for voluntary surrender of license as final action on investigation.

Ms. Penttinen reviewed the information contained in the indictment filed against Dr. Hollander in Pima County Superior Court which indicates Dr. Hollander has been indicted on 96 charges, most of which are felonies, regarding prescription fraud, diversion of controlled substances, using a false identity, and running a criminal syndicate. The trial for Dr. Hollander is not expected to begin for several months, so she has not been convicted of anything at this time. The Board members reviewed the investigation report from the Office of the Attorney General in the criminal matter. Ms. Penttinen explained that the formal hearing in the Board's case was vacated upon Dr. Hollander's acceptance of a Consent Agreement for the voluntary surrender of her license which includes the stipulation that such surrender will be deemed a revocation of her license. At this time the Board is asked to consider accepting that Consent Agreement. There was brief discussion among the Board members regarding the admissions made by Dr. Hollander in the A.G.'s investigation report and the scope of the activities Dr. Hollander was involved in. There also was discussion regarding the absence of any requirement in the agreement that Dr. Hollander would not be permitted to re-apply for her license for a certain length of time. Ms. Penttinen and Ms. Verstegen summarized that, although Dr. Hollander could legally re-apply for her license at any time, the admissions made by Dr. Hollander in this matter and the information contained in the A.G.'s investigation report would constitute sufficient grounds for denial of a re-application. Also, if Dr. Hollander were to re-apply she would be required to demonstrate that she has resolved all criminal matters and that she has undergone sufficient rehabilitation to no longer be a danger to public health and safety.

**MOTION:** Dr. Kaplan moved to accept the Consent Agreement for the voluntary surrender of Dr. Hollander's license including the stipulation that the surrender would be deemed a revocation of her license. Ms. Reagan seconded the motion. There was no discussion on the motion.

**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.

The Board members reviewed the most recent status update which was received from attorney Ed Gaines on August 10, 2010. That report indicates Dr. Peterson is still in settlement negotiations with the U.S. Attorney's office at this time. Mr. Gaines believes that a settlement will be reached in the near future, and he will keep the Board updated as to that progress.

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

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

Dr. Leonetti reviewed the most recent progress report submitted by Dr. Sucher which indicates Dr. Shapiro is compliant with all monitoring and probation requirements. There was discussion regarding Dr. Shapiro's last appearance before the Board regarding this specific matter. Dr. Leonetti directed Board staff to invite Dr. Shapiro to appear before the Board in either December or January for a probation progress interview.

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

- c. 08-47-B – Antonius Su: Monthly update.

Agenda items VI(b) and (c) were reviewed together. Dr. Leonetti stated that all billing records and charts he has reviewed to date are in order with no problems. The Board also is in receipt of a request from attorney Bruce Crawford for approval of four separate CME courses related to billing and coding. Mr. Crawford also requested an extension of time for Drs. Su and Laurino to complete the CME (per the

terms of their consent agreements). The Board members reviewed the CME and agreed that all courses were sufficient.

**MOTION:** Dr. Leonetti moved to extend the time for Drs. Su and Laurino to complete their required CME until October 1, 2010. They must send their certificates once completed. Dr. Kaplan seconded the motion. There was no further discussion.

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

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

Ms. Penttinen advised the Board that she was unable to notify Dr. Brown of the Board's request for him to appear in time for him to make arrangements in his schedule to be present today. However, Dr. Brown will be present at the September Board meeting for a probation progress interview. In the mean time there have been no reports from Dr. Sucher of any non-compliance.

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

a. Correspondence with Dr. W. Joseph Gelling regarding online CME courses.

The Board reviewed the letter received from Dr. Gelling regarding online CME courses. Ms. Penttinen already sent a response to Dr. Gelling explaining the CME requirements as stated in the Board's Rules. Dr. Leonetti stated he feels Ms. Penttinen's response is sufficient and no further action needs to be taken.

**VIII. Review, Discussion and Possible Action on License Renewal Applications:** The Board will review, discuss, and take action to approve, deny, or issue a deficiency notice for the following physicians' license renewal applications and/or dispensing registration renewals:

Steven Axt  
Rodney Berkey  
David Berman  
Catherine Brigandi  
J. David Brown  
Steven Burns  
Douglas Cohen  
David Corcoran  
Laureen Cota  
Joseph Domanico  
Parker Gennett

Hugh R. Hall  
Joshua Johnson  
Noland Jones  
Jeffrey Kleis  
Cindy Mann  
Steven Mann  
Mary Maselli  
Paul McMaster  
Lois Miller  
Eduardo Montes  
Kara Montes

Dennis Noss  
Kent Peterson  
Raymond Peterson  
J. Barton Ripperger  
Michael Rosenblum  
Marie Sangalang  
David Savage  
Vivian Seater-Benson  
Kendall Shumway

**MOTION:** Dr. Leonetti moved to request additional information from Dr. Noland Jones regarding his CME; all other applications are approved, pending receipt of deficient information and/or fees, if applicable. Dr. Campbell seconded the motion. There was no discussion.

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

**IX. Executive Director's Report – Review, Discussion and Possible Action**

a. Open complaint status report.

Ms. Penttinen reviewed the complaint status report which indicates there are presently 46 open complaints. Given the Board's actions in today's meeting, there are now 44 cases.

b. Complaint filed with Ombudsman's Office by Dr. Dershowitz.

Dr. Kaplan recused himself from the discussion and Board action. The remaining Board members reviewed the preliminary report received from the Ombudsman's office which requested the Board's response by August 27, 2010. The Ombudsman's report indicates their office feels that disciplinary action was taken against Dr. Kaplan and Dr. Michael Kates. Their conclusion is based on Board meeting minutes from 1975, when the alleged action was taken, and 2007, when the Board reviewed the same complaint filed by Dr. Dershowitz with their office.

The (current) Board members reviewed extensively the minutes from 1975 which reflect discussion about possible disciplinary action but no actual action being taken by the Board. There are no motions in those minutes to reflect that the Board (in 1975) found specific violations or imposed specific disciplinary

terms. The (current) Board members also reviewed the minutes from 2007 which generally discuss this matter but do not demonstrate agreement with the Ombudsman's office that disciplinary action had been taken against Drs. Kaplan and Kates in 1975. Also reviewed was the written correspondence sent to the Board's former Executive Director Linda Wells from the Ombudsman's office dated June 6, 2007. That correspondence indicates there was agreement from Ms. Wells to place copies of Board minutes from 1975 into the license files for Drs. Kates and Kaplan. Dr. Leonetti stated he did not recall ever having seen this letter and it does not coincide with what the Board decided to do at that time. Ms. Penttinen researched and found that Ms. Wells' last date of employment with the Board was on July 15, 2007. Prior to a permanent replacement being hired there was a small series of administrative clerks who filled the position. The Board feels that perhaps that temporary staff may have discarded the correspondence without understanding its importance.

Dr. Kaplan addressed the Board and presented a two-page written statement which is appended to these minutes. Dr. Kaplan strongly denies that any disciplinary action was ever taken against him in 1975 or any other time. He stated that unless the Board has direct evidence to demonstrate that disciplinary action was actually taken against him they cannot legally place anything on his license record or public profile.

Dr. Leonetti stated he feels the Board must be as objective and transparent as possible, particularly because this matter deals with a sitting Board member. He does not feel that Dr. Kaplan has been shown any favoritism or been given any special treatment due to his position on the Board. However, he does not feel there is definitive evidence to demonstrate that disciplinary action was actually taken against Drs. Kaplan and Kates. Anything posted to a licensee's file or on the agency's website needs to be well-documented and substantiated. Absent any corroborating evidence regarding actual disciplinary action, he is not inclined to permanently post any negative information on any licensee's public profile. Dr. Leonetti further stated that if there are any inquiries regarding Dr. Kaplan's or Dr. Kates' license history, the inquirer may review all minutes as they are public record.

There was discussion among the remaining Board members in agreement with Dr. Leonetti's statements. Dr. Leonetti directed Ms. Penttinen to submit a response to the Ombudsman's office summarizing this discussion.

c. Malpractice case report

- i. Bruce Levin – Claim filed 03/23/2006 by patient K.T. (Civil suit was filed 06/16/05.) Amount of settlement or judgment was \$324,500.00. Dr. Levin did not previously disclose this action on his license renewal application(s).

The Board members reviewed the PICA report and NPDB report for this matter which indicates Dr. Levin performed a wart removal procedure of the patient's right foot using a laser. Patient claims multiple post-procedure complications. The Board members voted to open a complaint case to investigate both the quality of care issues and Dr. Levin's failure to disclose this matter on his license renewal(s).

- ii. Stephen Barrett – Claim filed 02/25/10 by patient S.H. Closed on 06/16/10 with a \$0 settlement for Dr. Barrett.

The Board members reviewed the report received from PICA in this matter which indicates the patient had arthrodesis surgery in Texas. Dr. Barrett was not the primary surgeon; he assisted another surgeon. The patient progressed well post-operatively but then reported pain and other problems not at the surgical site. Dr. Barrett was never legally served and the claim against him was dismissed. The Board members agreed not to open a complaint investigation and to take no action against Dr. Barrett in this matter.

**X. Call To The Public**

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

**XI. Next Board Meeting Date:**

a. September 8, 2010, 8:30 a.m.

**XII. Adjournment**

There being no other business before the Board, the meeting was adjourned at 10:23 a.m.

# THE POWER OF POTENT COVERAGE

① MEMBERS OF THE BOARD, ASSISTANT ATTORNEY GENERAL AND EXECUTIVE DIRECTOR.

A COMPLAINT BY ONE DR. DERSHOWITZ WAS MADE THRU THE OMBUDSMAN'S OFFICE TO THE STATE BOARD OF PODIATRY EXAMINERS IN 2007. THIS WAS IN REFERENCE TO A SITUATION THAT OCCURRED IN THE YEAR 1975. THIS IS 35 YRS AGO. THE STATE BOARD HIRED A PRIVATE INVESTIGATOR TO INVESTIGATE THIS COMPLAINT AND PRESENTED HIS REPORT TO THE BOARD. THE OLD RECORDS IN THE ARCHIVES DID NOT REVEAL ANY EVIDENCE THAT ANY DISCIPLINARY ACTION WAS TAKEN. THE MINUTES OF THE 1975 BOARD STATE ONE THING BUT NO RECORDS ARE FOUND TO INDICATE ANY ACTION WAS TAKEN. IF THERE WERE NO RECORDS OF ANY DISCIPLINARY ACTION FOUND, THE BOARD CONCLUDED IN 2007 THAT NO OFFICIAL ACTION WAS TAKEN. I RECUSED MYSELF DURING EXECUTIVE SESSION AND ANY DELIBERATIONS I HAVE DONE NOTHING WRONG. IF RECORDS ARE MISSING OR UNAVAILABLE TO SUBSTANTIATE THIS ACCUSATION THIS PROBABLY IS DUE TO POOR RECORD KEEPING. THERE IS A PHILOSOPHY IN MEDICINE AND RECORD KEEPING, "IF IT IS NOT WRITTEN OR RECORDED, THEN IT WAS NOT DONE." I SUBMIT THAT OTHER THAN MINUTES OF THE 1975 BOARD NO OFFICIAL RECORD OF ANY DISCIPLINARY ACTION WAS TAKEN. I ALSO SUBMIT THE FACT THAT TO MY RECOLLECTION NO DISCIPLINARY ACTION WAS TAKEN.

Benny R Kaplan DPM  
8-11-10

Once-A-Day  
**TROVAN**™ ORAL  
(trovafloxacin/alatrofloxacin)  
100mg 200mg tablets/200mg 300mg IV injection

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# THE POWER OF POTENT COVERAGE

2 I FIND THAT THE CONTINUING FRIVOLOUS COMPLAINTS IN THIS MATTER COULD BE CONSIDERED HARASSMENT. DR. DERSHOWITZ HAS EVERY RIGHT TO FILE COMPLAINTS AGAINST ME, ANY OTHER MEMBERS OF THIS BOARD OR ANY PODIATRIST. FRIVOLOUS COMPLAINTS TO THIS BOARD MUST BE INVESTIGATED. WHAT WOULD CAUSE SOMEONE TO BRING SOMETHING THAT MAY HAVE HAPPENED 35 YRS. AGO TO THE FOREFRONT TODAY. PERHAPS HIS MOTIVE IS MORE THAN JUST ATTEMPTING TO DO WHAT HE THINKS IS THE "RIGHT" THING. IF HOWEVER THE INTENT IS TO DISCREDIT ME OR OTHER MEMBERS OF THIS BOARD, THIS WILL NOT HAPPEN. MY INTEGRITY IN MY LIFE AND JUDGEMENTS IS OF UTMOST IMPORTANCE TO ME. I CANNOT AND WILL NOT LIVE A LIFE WITH HATE AND VINDICTIVE THOUGHTS, UNLIKE OTHERS THAT DO.

DR. DERSHOWITZ HAS HAD MORE COMPLAINTS BEFORE THIS BOARD THAN ANY OTHER PODIATRIST, FOR THE PAST 12 YRS. OF MY TERM ON THIS BOARD HIS COMPLAINTS HAVE ALWAYS BEEN TREATED FAIRLY AND IMPARTIALLY/IMPARTIALLY, AND WILL CONTINUE SO IF OTHER COMPLAINTS AGAINST HIM COME BEFORE THIS BOARD.

I HAVE NO REASON/REASON TO HARBOR VENGEFUL THOUGHTS OR VINDICTIVE ATTITUDE. I BELIEVE IN KARMA. THERE IS GOOD KARMA AND BAD KARMA. I HAVE GOOD KARMA.

Benny R. Kaplan DPM  
8-11-10

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IV  
(trovafloxacin/alatrofloxacin)  
100mg 200mg tablets/200mg 300mg IV injection

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