



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

October 13, 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
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 8:38 a.m.

II. Roll Call

Dr. Leonetti noted for the record that Mr. Villanueva was absent. All other Board members were present as were Ms. Penttinen and Ms. Verstegen.

III. Approval of Minutes

a. September 8, 2010 Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

IV. Status Updates: No Board Action – Information Only

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

Ms. Penttinen advised that the most recent quarterly report was received in August, so the next report is due in November. Dr. Leonetti commented that the U.S. Attorney's investigation has been ongoing for an extended period of time and suggested that if there is no final resolution in the federal matter by the end of the year the Board should proceed with its investigation. Dr. Kaplan noted that the Board may have trouble obtaining information related to this matter. There was brief discussion among the Board members with a final decision to await the November update from Dr. Peterson's attorney. If the November update is not sufficient to demonstrate substantive progress in the federal matter then Dr. Peterson will be asked to appear at the December Board meeting to discuss this case.

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

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

Ms. Penttinen advised that the next quarterly progress report is due in November. She has not received any reports of non-compliance from Dr. Sucher. Also, Dr. Shapiro has agreed to appear at the January 2011 Board meeting for a probation compliance interview with the Board.

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

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

Agenda items V(b) and (c) were reviewed together. Dr. Leonetti advised that all records reviewed to date are in order with no billing problems. Ms. Penttinen provided the Board with the CME documents submitted by Drs. Su and Laurino on October 12. The Board reviewed those documents briefly and then

a recess was called at 8:48 a.m. so Dr. Leonetti could speak by phone with the doctors' attorney Bruce Crawford. The meeting re-convened at 8:53 a.m. and Dr. Leonetti reviewed his discussion with Mr. Crawford. Essentially, Drs. Su and Laurino had asked for a potential extension to complete their CME if the Board did not approve the courses submitted at this time. Dr. Leonetti stated he does not feel an extension is necessary as he feels the CME completed already is sufficient to meet the requirements of the doctors' probation.

MOTION: Dr. Leonetti moved to accept the CME submitted by Drs. Su and Laurino. Dr. Campbell seconded the motion. There was brief discussion that the only requirement remaining is for Drs. Su and Laurino to submit a written request for the termination of their probation.

VOTE: The motion passed unanimously by voice vote.

d. 09-13-M – Patrick Farrell: Monthly update.

Ms. Penttinen reviewed the monthly update letter submitted by Dr. Farrell stating he did not perform any surgical procedures as defined in his consent agreement. Ms. Penttinen also received back from Dr. Farrell the amendment to his consent agreement previously approved by the Board. Dr. Leonetti signed the amendment. There was no further action or discussion.

e. 09-17-B – J. David Brown: Monthly update and probation interview with the Board.

Ms. Penttinen reviewed the status report submitted by Dr. Sucher on October 11, 2010 which indicates that Dr. Brown is in compliance with all monitoring requirements.

VI. Review, Discussion and Possible Action on Administrative Matters

a. Election of Secretary-Treasurer (officer position vacated by Mr. Villanueva).

Dr. Leonetti informed the Board that Mr. Villanueva had verbally agreed to step down from his position as the Board's Secretary-Treasurer due to his multiple absences at Board meetings.

MOTION: Dr. Leonetti moved to elect Ms. Reagan as the Secretary-Treasurer. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

b. Confirmation of 2011 Board meeting dates and oral examination dates for new applicants.

Ms. Penttinen reviewed the proposed Board meeting dates for 2011, keeping the regularly-scheduled meetings on the second Wednesday of each month. These dates are as follows: January 12, February 9, March 9, April 13, May 11, June 8, July 13, August 10, September 14, October 12, November 9, and December 14. She advised there were no conflicts with State holidays or furlough days, and the semi-annual oral exams for new license applicants could be completed on June 8 and December 14.

MOTION: Dr. Kaplan moved to accept the Board meeting dates and oral exam dates as proposed. Ms. Reagan seconded the motion but asked if the December Board meeting and oral exam should be moved to December 7 due to the 14th being so close to the holidays. There was brief discussion and final decision to keep the December 14th date. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

c. Request from Dr. Andrea Roemer to review to clarify scope of practice in relation to outpatient care.

Ms. Penttinen explained that she had received an email from Dr. Roemer asking about whether or not podiatrists could assess vital signs. Dr. Roemer had stated her question was in relation to a legal matter, so Ms. Penttinen told her to put her question in writing for review by the Board as Ms. Penttinen did not feel it was appropriate for her to answer this question at the staff level. Dr. Roemer's written request asks if obtaining vital signs for routine outpatient clinic exams is considered the standard of care. There

was brief discussion among the Board members regarding the Board's jurisdiction and agreement that this is not a Board issue. Dr. Leonetti instructed Ms. Penttinen to send a letter to Dr. Roemer advising that the Board does not issue advisory opinions and that she should consult her insurance carrier and/or attorney.

d. Request from Dr. Bruce Werber for CME approval for AzPMA lecture series and annual conference. Dr. Leonetti reviewed with the Board the letter submitted by Dr. Werber. Following that review, the Board would like additional information on the following: November 20 – need to know the topics to be covered; December 11 – need clarification of “practice management” information; February and March – need to know the speaker before approval; and the annual AzPMA conference should be submitted separately for approval due to the volume of CME provided in that conference. Ms. Penttinen will request the additional information from Dr. Werber.

e. New license application: Dr. Zina Capiello.

The Board reviewed the new license application for Dr. Capiello. All required documentation was submitted and the Board found no deficiencies in the substantive review.

MOTION: Dr. Leonetti moved to approve Dr. Capiello's license application and allow her to sit for the oral exam on December 8, 2010. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

VII. 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:

Ana Burns

Noland Jones

Ms. Penttinen advised that she had received additional CME documents from Dr. Burns and that renewal application appears to be complete. However, she has not received anything from Dr. Jones. A letter was sent to Dr. Jones on August 11, 2010 asking him to provide additional information on his CME. When he did not respond, Ms. Penttinen spoke with him by phone on September 14 at which time Dr. Jones stated he would send the necessary information by regular mail in time for today's Board meeting. However, Dr. Jones has not submitted that information.

MOTION: Dr. Leonetti moved to approve the license renewal application for Dr. Burns. Dr. Campbell seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Kaplan moved to deny all but 6.75 hours of Dr. Jones' CME and allow him 60 days to complete 18.25 additional CME hours. Dr. Jones may complete seven (7) hours online, but all 18.25 hours must be directly related to podiatry. Dr. Campbell seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

a. Open complaint status report.

The Board reviewed the open complaint status report which indicates there are currently 49 open complaints. Ms. Reagan expressed concerns regarding the length of time that some complaints have been open. There was extensive discussion among the Board members and Ms. Penttinen on this topic. Ms. Penttinen explained that with the new investigation consultants the Board should be able to dispose of many of these cases fairly quickly; however, the current backlog is not entirely a bad sign. During the

last sunset review in 2008, the Auditor General recommended that the Board change its process of handling complaints, specifically to separate the investigation and adjudication functions. Due to budget constraints, the Auditors recommended utilizing the physician Board members to complete the quality of care investigations. But due to their full-time work schedules with their podiatry practices they are left with little time to complete all investigations. Ms. Penttinen stated that by attempting to implement the recommendation of the Auditor General and encountering these unforeseen complications, it provides the Board with justification for hiring the outside consultants which will require a fee increase in order to sustain. The Board members expressed agreement with Ms. Penttinen's explanation and there was no further discussion.

b. Status of complaint filed with the Ombudsman's Office by Dr. Dershowitz.

Dr. Kaplan recused himself from the Board's review on this matter. Dr. Leonetti provided a detailed summary of the events leading up to this point. In essence, a complaint was filed against the Board alleging that Dr. Kaplan and Dr. Michael Kates had been disciplined in 1975 but the discipline was not noted on their public profiles or in their license files. The Ombudsman's Office investigated the allegation and found it to be substantiated. The Ombudsman's decision was based on Board meeting minutes from 1975 through 1976, although it is noted that the minutes from April 9, 1975 cannot be located. That was the Board meeting when the alleged disciplinary action was imposed. Following the preliminary report from that agency, the Board submitted a response stating that in the absence of written findings of fact, conclusions of law and disciplinary order terms, the Board would not place negative information on the records of Drs. Kates and Kaplan. Any public inquiries on this matter would be directed to review of the actual minutes that are available. The Ombudsman's Office issued their final report, maintaining their conclusion that the allegation is substantiated, and the report was forwarded to the Governor's office as well as the health committees in both branches of the Legislature. It has been suggested that the Board revisit this matter to determine if any other course of action by the Board should be taken.

Dr. Leonetti asked Ms. Penttinen if she had been able to speak with Patrick Shannahan of the Ombudsman's Office. Ms. Penttinen stated she attempted but Mr. Shannahan is out of the office until October 14. Dr. Leonetti stated he would still like to speak with Mr. Shannahan regarding this matter.

Dr. Kaplan addressed the Board. He first questioned what the Board's Statutes contained in 1975 and whether there was a records retention law which may affect the documentation in this matter. He also questioned if there was a record of what actions constituted "unprofessional conduct" in 1975. Dr. Kaplan further asked where the letter(s) were which he and Dr. Kates supposedly wrote asking for their probation to be terminated, or any correspondence sent to him from the Board indicating that his probation was concluded. He stated he does not like that the Ombudsman's Office has implied that the Board is acting with favoritism. Dr. Kaplan also submitted this statement: "The implied notion that the appearance of impropriety by the Board is unfair and demeans the hard work, fairness in decision making and there integrity [sic]. I believe that without proper documentation other than very poor copies of minutes, they are acting properly and in accordance with the law."

Dr. Leonetti reviewed the options the Board has at this time. He stated that the Governor's office has contacted the state podiatry association's lobbyist, (Joe Abate), who raised concerns that this issue will affect the agency's current sunset review. Mr. Abate also expressed concern that this matter was not resolved when it was first investigated by the Ombudsman's Office in 2007. Dr. Leonetti stated there is an implication of censure and probation (against Drs. Kates and Kaplan) but it cannot be proven at this time. It is unknown how records were kept in 1975. Dr. Leonetti asked Ms. Verstegen if the Board had sufficient evidence to place disciplinary action information on the public profiles for Drs. Kates and Kaplan. He also asked Ms. Verstegen whether the Board is legally required to post disciplinary action to the Board's website. Ms. Verstegen advised that it is up to the Board to determine if there is sufficient evidence of disciplinary action. As for posting on the website, there is no requirement for anything to be on the Board's website, although this Board has chosen to do so. Ms. Reagan stated that she feels the Board will suffer either way with legal action no matter what they decide to do.

Dr. Leonetti stated that there are two main issues of concern from the Governor's office. First is that Dr. Kaplan is a sitting Board member and there may be an appearance that the Board is showing favoritism to him because of that. The second is that it appears the agency ignored the Ombudsman's Office when

this matter was investigated in 2007. He suggested that the Board send an amended response to the Ombudsman's Office explaining that complete disciplinary action documentation retained by the Board only goes back to 1982. Ms. Penttinen offered additional information on this point. She recently conducted a complete audit of all Board meeting minutes from 1971 through 1979 and found only one other disciplinary action. The action was taken against Dr. Paul Fabricant on January 5, 1977. The specific findings, violations, and disciplinary terms were written into the Board meeting minutes for that meeting. However, she was unable to compare that with Dr. Fabricant's license file because he has been expired for many years and his license file has been purged. Also, the only information in the agency's database for Dr. Fabricant is his name, license number, and address. There is no license issue date, expiration date, or any disciplinary action information in the database. It is unknown if disciplinary actions taken by the Board in the 1970's were captured only in the meeting minutes. Ms. Penttinen stated it appears that 1982 was when the Board first started implementing the use of specific complaint investigation files, separate from the license files. However, she was able to find the action for Dr. Fabricant as well as a disciplinary action taken against Dr. Murray Davidson (expired) from 1980 which was in Dr. Davidson's license file.

Dr. Leonetti stated that he is certain there were more than two disciplinary actions taken by the Board during the time period Ms. Penttinen reviewed in the minutes. Ms. Penttinen stated there were numerous references to violations but the minutes seem to reflect that when a violation was identified, the licensee was sent a letter advising them to stop the alleged behavior. If that was done, it seems no "official" disciplinary action was taken by the Board as the particular issue would not appear again in the minutes.

For the purpose of addressing all concerns raised, Ms. Penttinen asked Dr. Kaplan about the minutes from late 1975 and early 1976 which indicate he appeared before the Board and sent correspondence asking for his probation to be terminated early. Dr. Kaplan stated he had not done so and the relevant minutes were reviewed. Dr. Kaplan stated he does not recall ever appearing before the Board at that time for this matter and he does not believe he would have done anything on his own without Dr. Kates. Ms. Penttinen also asked Dr. Kaplan if he would be willing to consider a compromise whereby the Board could comply with the recommendations of the Ombudsman's Office as well as allow him to state his position. She suggested that, if the Board were in agreement, the relevant minutes could be posted to his profile along with a written statement from him with any retort he may wish to make, as well as a statement from the Board indicating whether or not they feel this allegation is substantiated. Dr. Kaplan stated he would not agree to that and that he does not answer to the Ombudsman's Office.

Dr. Leonetti questioned the validity of the minutes from the 1970's and whether or not the Board could realistically rely on them. There was agreement among the Board members that the record-keeping practices at that time were very poor. Dr. Leonetti asked the other Board members for their thoughts on this matter. Ms. Reagan stated she believes the Board has done everything it can do but legally the Board does not have the documentation to prove that Drs. Kates and Kaplan were officially disciplined. Dr. Campbell asked Ms. Verstegen what the process would be from this point regarding any action that could be taken by the Governor. Ms. Verstegen stated this is a very unique situation particularly in light of the impending sunset review. She stated most likely there will need to be meetings between the Governor's office and a representative of the Board, but the Governor's office will not take any court action or legal action. There was discussion among the Board members about the possible negative affect this issue will have on the sunset review.

Dr. Leonetti stated he feels the Board should stand by their previous decision in this matter due to poor record-keeping at the time of the alleged discipline, including vague or inaccurate minutes. He is open to discuss this further with the Ombudsman's Office, the Governor's office, or any members of the Legislature as needed. The remaining Board members were in agreement with this course of action. Following this decision Ms. Penttinen advised the Board that she had reviewed previous financial records to try to identify the investigator who was hired by the Board in 2007 for this matter. She was unable to locate any payments made to anyone other than other state agencies for administrative costs, utilities, etc., and to Jeanne Hann for conducting the Board's Rules review. Dr. Leonetti stated he could not remember the investigator's name but he recalled it was a former police detective who had investigated the murder of a celebrity several years ago in Scottsdale, Arizona. Ms. Penttinen asked if he was speaking of Jim Raines as she had previously worked with Mr. Raines at the Arizona Medical Board and

this story sounded familiar. Drs. Kaplan and Leonetti confirmed that Mr. Raines was the investigator and asked Ms. Penttinen to try to contact him to determine if he retained any records from his investigation for the Board.

c. Malpractice case report.

Ms. Penttinen advised that she has not received any malpractice reports since the Board's last meeting.

d. Sunset Review – correspondence with the House of Representatives regarding the initial sunset review factors.

The Board reviewed the letter prepared by Ms. Penttinen to submit to the House of Representative for the current sunset review. Overall the Board felt the letter was good. Ms. Penttinen asked if the Statute and Rule changes cited in the letter should stay or be removed. Dr. Leonetti stated he had spoken with Joe Abate (lobbyist for the AzPMA) who recommended that Statute and/or Rule changes not be requested during sunset review. However, Dr. Leonetti feels that the changes requested at this time are okay because they are administrative and "house-keeping" issues, not related at all to the scope of podiatry practice. Ms. Penttinen will submit the letter as written.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. November 10, 2010, 8:30 a.m.

XI. Adjournment

There being no other business before the Board, the meeting was adjourned at 11:12 a.m.