



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; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

November 10, 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
(Vacant), Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

Dr. Leonetti called the meeting to order at 8:34 a.m.

II. Roll Call

Dr. Leonetti noted that all Board members were present, as were Ms. Penttinen and Ms. Verstegen. Dr. Leonetti explained that Jose Villanueva resigned his position as a public member of the Board and asked Ms. Penttinen if there was any progress on a replacement. Ms. Penttinen stated that the Governor's Office of Boards and Commissions is seeking applicants and will make an appointment as soon as they find a suitable candidate.

III. Approval of Minutes

a. October 13, 2010 Regular Session Minutes.

Dr. Kaplan suggested two corrections as follows: 1), Page 4, agenda item VIII(b), third paragraph should be corrected to reflect that Dr. Kaplan does "not" like that the Ombudsman's Office has implied that the Board is acting with favoritism; and 2), Page 5, agenda item VIII(b), seventh paragraph should be corrected to reflect that Dr. Kaplan stated he would not have taken any action in the matter "without" Dr. Kates' involvement. There was also brief discussion as to whether or not the Board's agendas and minutes should include the name of Dr. Dershowitz as the complainant to the Ombudsman's Office. Ms. Penttinen pointed out that Dr. Dershowitz name had been specifically stated in correspondence to the Board from the Ombudsman's Office. Ms. Verstegen added that the Ombudsman's final report is public record, including the source of the complaint. The Board agreed that Dr. Dershowitz's name does not need to be removed from Board agendas or minutes.

MOTION: Dr. Kaplan moved to approve the minutes with the two corrections as stated. Ms. Reagan seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

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

a. 09-45-C – William Leonetti: Unknown allegations. (Staff request for dismissal of complaint.)

Dr. Joseph Leonetti recused himself from the Board's review of this matter and turned the meeting over to Dr. Kaplan who summarized the complaint information. A complaint was received from H.T. who saw Dr. William Leonetti for an independent medical evaluation in relation to a work-related injury. The complaint information was unclear as to the nature of the allegations. Also, the complainant had

submitted a digital recording device, the contents of which were unknown because the device was not operational. Ms. Penttinen made two attempts to contact the complainant at his address of record in order to obtain further information about the nature of the allegations. The complainant was advised in writing that without further information the Board may not be able to proceed with the investigation. The complainant has not responded. Dr. Kaplan stated he finds it interesting that the complainant never responded to staff's requests for additional information. He added that he feels the complaint information is insufficient to proceed with an investigation and he agrees with the staff's request to dismiss the case with no Board action.

MOTION: Dr. Kaplan moved to dismiss this case with no Board action. Dr. Campbell 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.

Ms. Penttinen advised that she sent a letter to Dr. Peterson's attorney Ed Gaines asking for an update because the last quarterly report was received in August 2010. She has not received any response from Mr. Gaines. Ms. Penttinen asked the Board if they would like to proceed as discussed in last month's Board meeting and request Dr. Peterson to appear at the December 8, 2010 Board meeting to review this case. There was agreement among the Board members for that course of action.

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

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

Ms. Penttinen reviewed the most recent progress report from Dr. Sucher received on November 3, 2010. The report indicates Dr. Shapiro is in compliance with all monitoring requirements. Ms. Penttinen also confirmed that Dr. Shapiro is scheduled to appear at the January 2011 Board meeting for a probation status 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 reviewed the status of Dr. Su and Dr. Laurino's probation. The Board previously approved the continuing medical education courses submitted by both doctors and agreed that they had satisfied the requirements of their probation. The only remaining issue was the formal termination of their probation which must be requested in writing. The Board is now in receipt of such written requests.

MOTION: Dr. Leonetti moved to terminate the probation periods for both Dr. Su and Dr. Laurino. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

Dr. Leonetti reviewed the letter submitted by Dr. Farrell which indicates that he did not perform any tarsal tunnel or proximal procedures during the month of October 2010. There is no Board action on this matter.

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

Ms. Penttinen stated the last quarterly progress report from Dr. Sucher was received in October 2010. The next report is due in January 2011. She has not received any reports from Dr. Sucher of non-compliance with monitoring requirements.

VII. Review, Discussion and Possible Action on Administrative Matters

a. Status of Ombudsman's Office investigation report and Board response.

Dr. Kaplan recused himself from the Board's review of this agenda item. Dr. Leonetti advised the remaining Board members that he had a telephone discussion with Ms. Verstegen and Monty Lee of the

Attorney General's Office regarding the Board's options and legal position in this matter. He stated the record-keeping practices for certain periods of time are poor and the Board must be consistent and fair with what information is provided to the public and available on the Board's website. Dr. Leonetti feels the best option for the Board is to select an appropriate "cut-off" date for disciplinary actions that will be posted to the website. Because there are no minutes available from January 1980 through December 1989, some Board actions, (or alleged Board actions), taken during that time may be questionable. The same is true for actions taken prior to 1980 due to inaccurate or incomplete meeting minutes. Therefore he feels that January 1, 1990 is an appropriate date to start with and would still provide the public looking at the website with twenty years of disciplinary history. However, all verifiable actions prior to that date would remain in the license files and would be disclosed in a verbal or telephone inquiry or written license verification.

Ms. Penttinen reviewed the information she gathered in several audits she has conducted by reviewing all expired license files that are available, active license files, database information, and available meeting minutes. With the January 1, 1990 date in mind, she found that out of 375 current active licensees, 125 of them received their license prior to that date. Of those 125 licensees, there are a total of eight (8) disciplinary actions that were taken prior to January 1, 1990 (not including the action alleged in this matter). With regard to expired licensees, Ms. Penttinen found a total of 254 doctors listed in the database as expired, revoked or surrendered. Of those 254, there are 134 whose license files cannot be located. It is unknown if they were archived at some point. However, she also pointed out that for many of those expires licensees, and some active licensees, the Board does have hard copies of actual disciplinary documents which were executed by the Board, particularly the eight (8) actions confirmed to have been taken prior to January 1990.

MOTION: Ms. Reagan moved to accept the start date of January 1, 1990 for disciplinary actions that will be posted to the Board's website. Ms. Penttinen asked to clarify before a vote if the Board's decision would include placing copies of the relevant minutes in this matter into the license files of Drs. Kates and Kaplan. Dr. Kaplan addressed the Board and stated the minutes should be placed in his file. Dr. Leonetti agreed and stated the most important thing should be to ensure that the language added to the Board's website is clear and easily understood. Dr. Leonetti seconded the motion. There was no further discussion.

VOTE: The motion passed unanimously by voice vote.

Following the vote Dr. Leonetti directed Ms. Penttinen to send written notification of the Board's decision today to the Ombudsman's Office, who hopefully will generate an amendment to their report in this matter. The letter from the Board will also be copied to all members of the state Senate and House health committees. There was brief discussion with Ms. Verstegen regarding the legality of placing minutes in a license file. Ms. Verstegen advised this could be done and it then allows the public to review the minutes and decide on their own what they feel the Board action was, if any. There was also a short discussion as to what information the public is or would be given in a telephone license inquiry. Ms. Penttinen stated she has received one such inquiry for information regarding Dr. Kaplan. She advised that inquirer that disciplinary action was alleged to have happened in 1975 although the Board is unable to locate a specific disciplinary document, but they could review the Board's meeting minutes from that time period which are available to the public.

- b. New license applications
 - i. Dr. Raziuddin Ahmed
 - ii. Dr. Joel Bowen
 - iii. Dr. Matthew Hakeman
 - iv. Dr. Christopher Suykerbuyk
 - v. Dr. Kyle Vaughn

There was brief discussion regarding Dr. Matthew Hakeman. Ms. Penttinen advised that he was approved to sit for the June 2010 oral exam but did not show. He was told he could sit for the December 8, 2010 exam, per the Board's laws. The Board members reviewed his application information with regard to his previous substance abuse treatment. The Board would like him to remain at the Board

meeting on December 8 after his oral exam to discuss his treatment with the Board. Ms. Penttinen also was directed to ask Dr. Hakeman to provide written information regarding his recovery status prior to the meeting. There was also discussion regarding Dr. Bowen because he has not yet completed the PMLexis exam. Dr. Campbell inquired if he is eligible to sit for the oral exam without the PMLexis. Initially the Board decided to instruct Dr. Bowen to take that exam before the December 8 oral exam. Ms. Penttinen stated that she is uncertain of the exact nature of conversations she has had with Dr. Bowen but most likely she has advised him that he would be allowed to sit for the exam if the PMLexis was the only deficiency because the Board has allowed this in the past. (With the caveat that the license would not be issued until the PMLexis results were received indicating a passing score.) Ms. Verstegen reviewed with the Board members the time frames listed in the Board's Statutes and Rules with regard to applicants passing a "written exam." The Board chose in the past to utilize the PMLexis exam as the Board's written exam (as stated in Rules). Ms. Verstegen advised that the Board's laws do not prohibit allowing an applicant to sit for the oral exam if they have not completed the written exam, so if Dr. Bowen wanted to protest the Board's decision he could probably do so (if the Board chose not to allow him to sit for the oral exam due to no written exam results)

MOTION: Dr. Leonetti moved to approve all listed applicants to sit for the oral exam. Dr. Hakeman will be asked to appear before the Board following the exam to provide additional substantive information. And Dr. Bowen will be allowed to take the oral exam but his license will not be issued until the Board receives proof of a passing score on the PMLexis exam. Dr. Kaplan 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 report was not reviewed. Dr. Leonetti advised he and Ms. Penttinen would be reviewing several cases to assign to investigators. Ms. Penttinen confirmed that all three consultants have completed all necessary paperwork and are able to provide services to the Board at this time.

b. Malpractice case report.

- i. Dr. Marvin Dobkin – PICA report indicates a case settled for \$0.00. (Previously investigated under case number 08-49-M and dismissed by the Board.)

Ms. Penttinen advised that this was just a standard report received from PICA indicating the civil case has settled with a \$0.00 amount for Dr. Dobkin. The Board members agree that because this matter was previously investigated, there is no need to take any action at this time.

c. Change of name for podiatric national board examinations.

The Board members reviewed the correspondence received from the National Board of Podiatric Medical Examiners. That correspondence states that as of July 2011 the national board exams will be referred to as the "American Podiatric Medical Licensing Examination (APMLE) Parts I, II & III. The term "PMLexis" for the Part III exam will no longer be used. Ms. Penttinen stated she will make the necessary updates to license application documents. Also, because the term "PMLexis" is specifically used in the Board's Rules, she will add this to the items already set to review in the Rules package the Board plans to request (for changes to the Rules). She will draft language for such a Rule change and present to the Board at the December 8 meeting.

d. FDA approval of the PinPointe Foot Laser.

The Board members reviewed the documentation which Ms. Penttinen confirmed was submitted by Dr. Steven Burns. The FDA has approved this laser for several uses including treatment of fungal toenail infections. Ms. Penttinen stated she has added this topic to the Board's website under the "Dr. 411" page to advise licensees that they can advertise laser treatment for fungal toenail infections but only if they are using this specific laser device. The Board directed Ms. Penttinen to contact the device manufacturer to obtain further information on all uses of the device.

e. Status of Public Member position vacated by Jose Villanueva.

This matter was already discussed during the roll call. Nothing further is added here.

f. Legislative update: status of sunset review and Committee of Reference.
Ms. Penttinen advised that the Committee of Reference has been scheduled for December 9, 2010. The Board members would like the letter to the Ombudsman's office (as discussed above) to go out as soon as possible so the Committee members have a chance to review that information prior to the Committee hearing. The Board also would like that letter copied to all members of the health committees in both the Senate and the House of Representatives, the Governor's office, and Steve Martell in the House.

IX. Call To The Public

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

X. Next Board Meeting Date:

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

XI. Adjournment

There being no other business before the Board, the meeting was adjourned at 10:28 a.m.