



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

December 8, 2010; 8:00 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 8:07 a.m.

II. Roll Call

Dr. Leonetti noted for the record that all Board members were present as was Ms. Penttinen. Ms. Verstegen was not present at the start of the meeting.

III. Review, Discussion and Possible Action on Administrative Matters

- a. Administration of oral examinations for the following license applicants:
- i. Dr. Raziuddin Ahmed
 - ii. Dr. Joel Bowen
 - iii. Dr. Zina Cappiell
 - iv. Dr. Brian Dechowtiz
 - v. Dr. Matthew Hakeman
 - vi. Dr. Christopher Suykerbuyk
 - vii. Dr. Kyle Vaughn

MOTION: Ms. Reagan moved to go into Executive Session for the purpose of conducting the oral examinations for the new license applicants. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the Board went into Executive Session at 8:08 a.m.

The Board returned to Regular Session at 8:23 a.m.

IV. Approval of Minutes

- a. November 10, 2010 Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

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

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

Dr. Leonetti advised the Board that a request to postpone the Board's review of this matter was received and approved. Ms. Penttinen explained that attorney Bruce Crawford is now representing Dr. Peterson in this matter as well as attorney Ed Gaines. Mr. Crawford had requested the postponement until January 2011 due to a scheduling conflict for today. Mr. Crawford also believes that a final resolution between Dr. Peterson and the federal government will be completed by that time. Dr. Leonetti confirmed that he had approved the postponement.

b. 09-30-M – Louis Geller: Practice below the standard of care. (Previous report of malpractice case settlement.)

Dr. Geller was not present. Dr. Kaplan recused himself as he was the physician investigator for this case. Dr. Kaplan reviewed the complaint which was actually a report of a malpractice claim in 2006. The case involved allegations of improper surgery. The National Practitioner Data Bank report indicates that a settlement was paid on Dr. Geller's behalf, (amount is confidential), and states the cause of action to be, "Floppy toes and permanent deformity of foot as a result of negligent Hoffman procedure based on instability of leg and foot pain."

Dr. Kaplan reviewed the patient's records for the Board. The patient had two surgical procedures prior to the one in question, done by two different doctors, to correct Hallux Valgus deformities. Neither procedure was successful. Dr. Geller attempted conservative care which was not beneficial and the patient requested surgery. Dr. Geller discussed with the patient the possible complications including delayed healing and non-union of the bones. He also discussed the patient's heavy smoking which can cause multiple healing problems. The procedure Dr. Geller performed included Lapidus procedure with K-wire fixation; metatarsal head resections of the 2nd, 3rd, and 4th metatarsals; and metatarsal ostectomy of the 5th metatarsal. Dr. Geller's notes reflect the patient was non-compliant with post-operative directives, specifically no weight-bearing and no smoking. The metatarsal-cuneiform joint of the 1st toe was displaced and the patient returned to surgery again for correction but continued non-compliance with weight-bearing and smoking.

Dr. Kaplan noted that no diagnostic films were provided. (This incident occurred in Michigan where Dr. Geller lives and practices; the Board does not have subpoena authority in Michigan.) Dr. Kaplan finds that there were no deviations from the standard of care in this case and no violations.

MOTION: Dr. Leonetti moved to dismiss this case finding no violations. Dr. Campbell seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

c. 09-37-C – Michael Stegman: Improper surgery to correct hammertoe condition.

Dr. Stegman was not present. Dr. Kaplan recused himself as he was the physician investigator for this case. The patient alleges improper surgery to correct a hammertoe condition, causing significant misalignment of toes 1 through 4 and eventual amputation of the 5th toe. Dr. Kaplan provided the following summary: Dr. Stegman had been treating the patient for hammertoe deformities since 1996. In January 2006, surgery was performed to correct the hammertoes and MPJ contractures of the right foot, including K-wire placement. The post-operative x-rays show a successful surgery. The post-operative course was uneventful until the 3rd office visit when the patient informed Dr. Stegman that his boot and foot became wet 5 days prior. Dr. Stegman noted a yellow-green staining on the wound dressing. The K-wires were removed and Dr. Stegman noted and infection in the pin tracts as well as multiple ulcerations.

The patient continued treatment with Dr. Stegman until February 2009. However, the first changes noted in the toe alignment were documented in March 2008, two years after the surgery. According to the pictures submitted by the patient, the 2nd toe is now deviated in a medial direction while the 3rd toe is deviated in a lateral direction, causing a V-shape deformity. Dr. Kaplan stated this is an unfortunate result, but he does not feel that Dr. Stegman provided substandard care. If the pins had remained in longer, there may have been a different result, but they had to be removed due to the infection. Based

on the patient's records before and after the surgery, the operative report, and the post-operative x-rays, Dr. Kaplan feels there are no deviations from the standard of care.

Dr. Leonetti agreed with Dr. Kaplan that based on the post-operative x-rays it appears the surgical procedure was done correctly. Removing the pins prematurely due to the infection may have compromised the whole healing process, but this sometimes happens. Dr. Leonetti stated he thinks the patient may also have had some other type of low-grade degeneration process going on, and sometimes long-term contractures just cannot be fixed. Dr. Campbell noted that she has generally seen a recent increase in the frequency of patient non-compliance with post-operative instructions and care. Dr. Leonetti agreed and stated it is important for doctors to make good decisions when determining if a patient is a good surgical candidate and to make use of adequate informed consent.

MOTION: Dr. Leonetti moved to dismiss the case finding no violations. Dr. Campbell seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

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

Ms. Penttinen advised that the most recent update from Dr. Sucher was received in November; the next report is due in February. There have been no reports of non-compliance. Also, Dr. Shapiro is scheduled to appear at the January Board meeting for a probation status interview. The Board discussed this and decided to ask Dr. Shapiro to appear in February rather than January so that they will have the most up to date information from Dr. Sucher. Ms. Penttinen will contact Dr. Shapiro with this request.

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

Dr. Leonetti reviewed the correspondence sent from Dr. Farrell which indicates he has not performed any surgical procedures as described in his consent agreement during the last month.

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

Ms. Penttinen advised that the next quarterly progress report from Dr. Sucher is due in January. She has not received any reports of non-compliance.

VII. Review, Discussion and Possible Action on Administrative Matters

a. Dr. Matthew Hakeman: review of license application file and discussion with Dr. Hakeman.

Ms. Penttinen reviewed for the Board members that Dr. Hakeman was previously approved to sit for the oral exam in June 2010 but he did not appear at that time. Dr. Hakeman had disclosed on his license application that he was treated for alcohol dependence in 2009. Ms. Penttinen had advised Dr. Hakeman that he would be eligible to sit for the December 2010 exam but would need to provide a written statement advising if there had been any material changes to the information in his license application. When that statement was received from Dr. Hakeman it was learned that he had relapsed in September 2010 and was arrested for DUI.

Dr. Hakeman was present and addressed the Board. He explained that he previously lived and practiced in Texas and Connecticut before moving to Florida due to family obligations. He stated he did not practice in Florida, and it was while he was in Florida that he first sought inpatient treatment for his alcohol dependence. The Board asked Dr. Hakeman about any previous disciplinary actions and Dr. Hakeman stated he had none. Ms. Penttinen noted for the record that Dr. Hakeman did not disclose on his license application that he had been licensed in Connecticut, therefore this Board did not receive a license verification from that state to confirm whether or not there was any disciplinary action.

The Board asked Dr. Hakeman about his alcohol use and the DUI he was arrested for. Dr. Hakeman stated he has poor coping skills. His DUI arrest was on September 13, 2010 and his sobriety date is September 14. He stated his breathalyzer reading at the time of his arrest was approximately 0.20 percent. Ms. Penttinen confirmed that she has not yet requested the police report for this incident as she just learned of it one week ago. Dr. Leonetti stated the Board must ensure if Dr. Hakeman is granted a

license that he is competent and safe to practice. Dr. Leonetti added that the Board should consider what other podiatrists with similar circumstances have been required to do such as drug screening, monitoring, etc. The Board also asked Dr. Hakeman about the last time he practiced and how much continuing education he has been doing. Dr. Hakeman stated he has not practiced in a year and a half and has not done any CME in that time.

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

VOTE: The motion passed unanimously by voice vote and the Board adjourned into Executive Session at 9:09 a.m.

The Board returned to Regular Session at 9:26 a.m.

Dr. Leonetti advised Dr. Hakeman that the Board has concerns regarding his alcohol history, recent relapse, arrest for DUI and the legal issues with that. He stated the Board had three options it could consider: 1) Deny the license application; 2) Issue a license with immediate suspension for at least six months and followed by probation, both including multiple terms for monitoring his recovery status; although, the Board feels this may be a problem as having a "suspension" would permanently taint his record; or 3) Allow Dr. Hakeman to withdraw his application now, begin a comprehensive treatment and monitoring program and re-apply in no less than six months. Option 3 also would include completing CME. Dr. Leonetti advised Dr. Hakeman that he would recommend option 3 of withdrawing his application, but noted that absent a license the Board cannot require him to complete any recovery activities or monitoring.

Dr. Hakeman stated he was hoping to be allowed to withdraw his application and that he will follow up with the Board at a later date. Ms. Reagan asked if he was planning to stay in Arizona and he stated that was unknown at this time. Dr. Leonetti advised Dr. Hakeman to send a written letter to Ms. Penttinen withdrawing his application. Ms. Penttinen will then provide him with a written explanation of the Board's recommendations for recovery activities (in order to have a future license application reviewed) which include: Participation for at least six continuous months in a substance abuse recovery monitoring program which includes drug testing, 12-step meeting attendance, medical oversight by a Board-approved addiction medicine specialist, no unauthorized use of any prescription medication, abstinence from all alcohol and all illegal drugs; obtain 25 hours of CME; provide status updates on his DUI charge(s); and provide a license verification from Connecticut. Ms. Versteegen advised that a motion and vote should be made to accept a written request to withdraw the application.

MOTION: Dr. Leonetti moved to accept and approve a withdrawal of Dr. Hakeman's license application once a request is received in writing. Ms. Reagan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

Ms. Penttinen reviewed the letter she sent to the Ombudsman's Office on the Board's behalf explaining the action taken by the Board to comply with the recommendations made by that office. The Board also reviewed the response received from the Ombudsman which indicates that they are satisfied with the Board's actions and the matter is now concluded. Ms. Penttinen also advised that a copy of the Ombudsman's response letter was also distributed to the members of the health committees in the legislature so they are all aware of the satisfactory conclusion of this matter.

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

a. Open complaint status report.

Ms. Penttinen advised that she has received two complaints in the last month which puts the total at approximately 50, including the two which were dismissed today. There are 13 files which are copied and ready to go out to the new consultants for review.

b. Malpractice case report.

Ms. Penttinen confirmed that no new malpractice reports have been received.

c. Status of vacant Public Member position.

Ms. Penttinen advised that the Governor's Office of Boards and commissions has appointed Mr. John Rhodes from Safford, Arizona to the vacant Public Member position on the Board. There was discussion among the Board members and Ms. Penttinen regarding the costs associated with travel reimbursement. Ms. Penttinen advised that the total travel reimbursement will be approximately \$155.00 for transportation, plus hotel and food costs if Mr. Rhodes decides to travel to Phoenix on the nights preceding the Board meetings. The current State maximum reimbursement amount for a hotel in Phoenix is \$103.00 per night, \$11.00 for breakfast and \$27.00 for dinner; all costs must be verified with a receipt and only actual costs will be reimbursed. Ms. Penttinen also advised that she has spoken with Mr. Rhodes regarding the necessary paperwork to complete his appointment. It is likely that this will be completed in time for him to begin serving on the Board at the January 11, 2011 meeting.

d. Legislative update: status of sunset review and Committee of Reference.

Ms. Penttinen advised that the Committee of Reference meeting at the legislature is scheduled for December 9, 2010 starting at 9:30 a.m. in House Hearing Room 3. She also was advised by House Health staff that the three agencies on the committee agenda which are sunset reviews will be taken first, so the Board's review should be completed early in the meeting.

IX. Call To The Public

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

X. Next Board Meeting Date:

a. January 12, 2011, 8:30 a.m.

XI. Adjournment

There being no further business before the Board, the meeting was adjourned at 9:53 a.m.