



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;
M. Elizabeth Miles, Public Member; John Rhodes, Public Member; Sarah Penttinen, Executive Director

BOARD MEETING MINUTES

May 11, 2011; 8:30 a.m.
1400 West Washington St., B1
Phoenix, AZ 85007

Board Members: Barry Kaplan, D.P.M, President
Joseph Leonetti, D.P.M., Member
Barbara Campbell, D.P.M., Member
M. Elizabeth Miles, Secretary-Treasurer
John Rhodes, Public Member

Staff: Sarah Penttinen, Executive Director

Assistant Attorney General: Keely Verstegen

I. Call to Order

Dr. Kaplan called the meeting to order at 8:31 a.m.

II. Roll Call

Dr. Kaplan noted that Dr. Leonetti was absent but would be available by phone if needed. All other Board members were present as were Ms. Penttinen and Ms. Verstegen.

III. Approval of Minutes

a. April 13, 2011 Regular Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

b. April 13, 2011 Executive Session Minutes.

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

VOTE: The motion passed unanimously by voice vote.

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

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

Ms. Penttinen advised that she has received records from Dr. Peterson for the month of April. She will forward them to Dr. Leonetti for review. Dr. Kaplan stated that Dr. Leonetti would advise the Board at the next meeting of his review of the records for both March and April.

b. 08-03-C – Elaine Shapiro, DPM: Monthly update.

Dr. Kaplan reviewed the progress report received from Dr. Sucher which indicates Dr. Shapiro is in compliance with all monitoring requirements. Ms. Miles inquired as to the letter from Dr. Sucher not being signed. Ms. Penttinen advised that the letters are signed electronically and sent via email, but the signature is very light and does not show up in photo copies.

c. 08-44-C – Alex Bui, DPM: Monthly update.

Ms. Penttinen reviewed the letter submitted by Dr. Bui indicating he did not have any charts to submit pursuant to his consent agreement. Dr. Kaplan asked Ms. Penttinen about the reporting times for Dr.

Bui. Ms. Penttinen explained that the consent agreement went into effect on March 28, 2011, then there was a 30-day period before the suspension began and the suspension started on April 27. Rather than have Dr. Bui's reports cover parts of two separate months it is easier to have his reporting be done by calendar month.

Ms. Penttinen also advised she had received a call from Dr. Bui's attorney Charles Hover asking whether Dr. Bui is allowed to be present in his office during the suspension and what types of activities he could engage in. Mr. Hover offered the example that a patient might call the office needing a prescription refill. Ms. Penttinen told him that Dr. Bui could not do anything that constituted "practicing" including evaluating, diagnosing, writing or refilling prescriptions, making referrals for diagnostic imaging, or anything that involved patient contact in any way. Mr. Hover had asked if Dr. Bui could be in the office for administrative tasks such as payroll. Ms. Penttinen advised him that was permissible but Dr. Bui would have to be very careful because it may give the appearance that he is practicing. The Board members concurred that it may be a difficult situation because if a patient were to call with a question, Dr. Bui's staff may consult him for advice which should not be done. The Board asked if there was another doctor working in Dr. Bui's office for him during the suspension. Ms. Penttinen stated that according to Mr. Hover, no such arrangements were made.

The Board discussed contacting Dr. Bui's office to verify that he is not practicing. It was decided that Ms. Penttinen would call his office and attempt to schedule an appointment as a new patient. She also will go to the office to observe any activities going on there. Dr. Bui also will be asked to provide information about what his staff has been told about how to refer patients or answer patients' questions during the suspension period.

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

Ms. Penttinen advised that Dr. Leonetti is reviewing the records submitted by Dr. Farrell. Dr. Kaplan stated Dr. Leonetti could provide an update of his review at the next Board meeting.

e. 09-17-B – J. David Brown, DPM: Monthly update.

Ms. Penttinen advised that the last progress report for Dr. Brown was received in April 2011 so the next report is due in July. She has not received any reports of non-compliance.

V. Review, Discussion and Possible Action on Administrative Matters

a. New License application(s):

- i. Dennis Bobik, DPM
- ii. Joseph Fiorito, DPM
- iii. Brian Leykum, DPM

MOTION: Dr. Kaplan moved to approve the license applications for Drs. Bobik, Fiorito and Leykum and allow them to sit for the oral exam on June 8. Ms. Miles seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

b. 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 registrations:

Zina Cappiello
Jeffrey Copoloff
Darick Freestone
Erwin Friedman
Daniel Hatch
Petrusia Howansky
Barry Kaplan

Edward Kelly
Lester Klebe
Alan Kravitz
Jean Kroyn
Bruce Levin
Vu Nguyen
Arlene Polakof

Travis Reber
Isidore Steiner
Melanie Violand
Paul Warner
Jeffrey Weiss

Dr. Kaplan recused himself from voting on his renewal application.

MOTION: Ms. Miles voted to approve the renewal application for Dr. Kaplan. Dr. Campbell seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote with Dr. Kaplan recused.

MOTION: Dr. Kaplan moved to approve the renewal applications for all other doctors listed. Ms. Miles seconded the motion. There was no discussion.

VOTE: The motion passed unanimously by voice vote.

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

a. Open complaint status report.

Ms. Penttinen advised that due to the recent computer problems she is not able to run the complaint status report, but there have not been any new complaints received since last month's Board meeting. She explained that the database has been restored but it is a version saved by the IT staff from approximately April 2010. All new license application information since that time has been added back into the database. None of the 2010 license renewal information was restored so it will be added back in for each licensee as the 2011 renewal applications are processed. The new computer purchased through Dell has been delayed due to difficulty obtaining parts from Japan, but the expected delivery date is May 19.

b. Update on budget status and proposed sweeps of Board cash.

The Board reviewed the email sent to Ms. Penttinen from the Office of Strategic Planning and Budgeting. The email indicates that the budget bill was passed but still must go back to the Joint Legislative Budget Committee for "back of the bill" adjustments to agency appropriations. Ms. Penttinen stated she will advise the Board once the final 2012 budget appropriations are published.

c. Malpractice case report.

The Board has not received any new reports of malpractice claims or settlements.

d. Legislative report.

Ms. Penttinen advised that both of the Board's bills (SB1044 and SB 1315) have been transmitted to the Governor and are awaiting signature. They will go into effect on the general effective date sometime in the fall. The current legislative session has not ended yet so the exact date for the general effective date is unknown.

e. New affidavit process for subpoenaed medical records.

Ms. Penttinen explained that the Board recently subpoenaed complete records from a physician but when the records were received some of the diagnostic images were missing. A follow-up was done with that physician to get the complete records and she then researched laws pertaining to subpoenas and medical records. Ms. Penttinen stated she found that under A.R.S. §12-2294.01(D)(4), subpoenaed records are supposed to be submitted with an affidavit from the custodian of records indicating that the records are complete. Ms. Penttinen incorporated that information into the cover letter which is sent with the subpoenas she sends out. However, many charts are being received without the affidavit and there has been a great deal of confusion about this. In an effort to assist the physicians with complying with the affidavit requirement, Ms. Penttinen developed a standardized, fill in the blank form which will also be sent out with the subpoenas.

f. Review of proposed changes in complaint investigation procedures.

Ms. Penttinen reviewed two updated written procedures for complaint investigations titled, "Complaint Investigation Procedure – Quality of care" and "Complaint Investigation Procedure – Unprofessional Conduct." The new procedures incorporate providing a copy of the investigation reports to the licensees prior to the initial Board review for each complaint. She also explained that in correspondence from attorney Bruce Crawford a request was made to allow our licensees not only to receive a copy of the investigation report but also to provide a written response to the report and supplemental documents if needed. That response to the report and supplemental documentation would then be provided to the

Board prior to the Board meeting. Mr. Crawford's intent is to allow the licensee(s) to address any additional concerns raised during the investigation which were not included in the initial notice letter to the licensee. Ms. Penttinen explained that the updated procedures include instruction on what to do in such a situation which includes providing a "re-notice" letter to the licensee. A written letter would be sent to the licensee outlining any areas of concern or alleged violations discovered during the investigation and the licensee would be allowed to provide a supplemental written response. But that response would be included in the final investigation report so the investigation is complete before it is scheduled for Board review.

There was discussion among the Board members in agreement with the procedures as updated with regard to providing a re-notice letter when needed and to provide the licensees with a copy of the investigation report prior to the Board's initial review. The Board members will receive the report prior to the licensees' receipt of such. Ms. Miles asked to clarify that the Board members do not receive a "complete copy" of the entire investigation file. For example, correspondence not directly related to the allegations and copies of subpoenas sent to other healthcare providers are not typically included in the packet for each case. Ms. Miles stated she does not feel the Board necessarily needs to receive the "entire" file and suggested changing the wording the procedure to state that the Board members are provided with a copy of the investigation report and all supporting materials. All Board members were in agreement with that change. Ms. Miles also suggested changing the title of the "Unprofessional Conduct" procedure to "Non-Quality of Care" due to quality of care issues being defined in the Board's statutes as unprofessional conduct. All Board members were in agreement with this change as well.

Ms. Verstegen advised the Board of her contact with Mr. Crawford on this matter as well as an issue raised by Mr. Crawford regarding the Board's investigation of malpractice claims. Mr. Crawford wished to ensure the Board's understanding that a settlement made on behalf of one of our licensees does not indicate the presence of any wrongdoing or negligence. Dr. Kaplan stated that he and the Board members are fully aware of this and the amount of any settlement made in a particular case does not impact the Board's review of that case. Ms. Penttinen will send correspondence to Mr. Crawford reflecting the Board's discussion.

MOTION: Ms. Miles moved to approve the two updated investigation procedures with the changes as noted above. Dr. Kaplan seconded the motion. There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

VII. Call To The Public

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

VIII. Next Board Meeting Date:

a. June 8, 2011 at 8:00 a.m. – The meeting will start at 8:00a.m. rather than 8:30 a.m. to allow time to administer the oral exams for new license applicants.

IX. Adjournment

There being no other business before the Board the meeting was adjourned at 9:33 a.m.