



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

TELECONFERENCE BOARD MEETING MINUTES

December 30, 2011; 12:00 p.m..
1400 West Washington St., Ste. 230
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: Jeanne Galvin

I. Call to Order

Dr. Kaplan called the meeting to order at 12:25 p.m.

II. Roll Call

Dr. Kaplan called the roll. Mr. Rhodes was absent. All other Board members were present and participating by phone. Ms. Penttinen was present in the Board's office. Ms. Galvin participated by phone.

III. Review, Discussion and Possible Action – Review of Complaints:

a. 11-43-B – Elaine Shapiro DPM: Habitual substance abuse; use of controlled substances for other than accepted therapeutic purposes; violation of stipulated agreement with Board.

Dr. Shapiro was not present and did not participate in the meeting. Dr. Michel Sucher was present by phone. Dr. Kaplan reviewed the allegations in this case as follows: habitual abuse of opiate medications and/or other controlled substances; use of prescription-only medications for other than accepted therapeutic reasons; violation of the consent agreement entered into between the Board and Dr. Shapiro; specifically Order paragraph "F." There also was a fourth allegation added for Dr. Shapiro's failure to report, as required by A.R.S. §32-3208, a misdemeanor charge of driving while impaired to the slightest degree. Dr. Kaplan reviewed the findings of the investigation report completed by Ms. Penttinen which indicates that allegations 1, 3 and 4 were substantiated. Ms. Penttinen deferred to Dr. Sucher as to whether or not Dr. Shapiro exceeded the therapeutic use of her medications.

Dr. Sucher provided the following information: He has been monitoring Dr. Shapiro for over three years. The original issue was prescription drugs where Dr. Shapiro's use became out of control. Now over the last several months she has been on pain medication due to a health condition. He had concerns about that pain medication but Dr. Shapiro seemed to be doing well until about two weeks ago. He has reviewed the DUI charge information which the Board has received and has concerns about Dr. Shapiro being impaired. He witnessed her (by phone) to have confusion and slurred speech. He received calls from her family members with concerns that she was impaired. Also, the relapse prevention counselor who Dr. Shapiro meets with in Tucson also had been concerned about her behavior. Dr. Sucher initially wanted to meet directly with Dr. Shapiro but then suggested that she go to the Cottonwood treatment facility for assessment of a possible relapse, safety to practice and any need for treatment. Dr. Shapiro did go to Cottonwood and the director there has told Dr. Sucher that Dr. Shapiro has relapsed, that she needs chemical dependency treatment, and that she is not safe to practice at this time. He expects she will need a minimum of 30 days treatment and possibly as long as 90 days. Dr. Sucher stated that either the medications Dr. Shapiro was taking were used in excessive doses or the combination of her medications caused her to become impaired.

Dr. Kaplan reviewed a report which Dr. Sucher had downloaded from the Arizona Board of Pharmacy's controlled substances database which lists all medication prescriptions Dr. Shapiro has filled within the last year. He stated it appears that either Dr. Shapiro did not tell the prescribers of those medications what medications she was already on or they did not care about how much she prescribed to her because it was excessive. Dr. Sucher stated he agrees. When he saw the report he noted increased doses and frequency of prescriptions. He stated he has not spoken with any of the prescribers so he does not know what they may or may not have been aware of but it is one of his concerns. Dr. Kaplan stated it appears Dr. Shapiro was seeing the various health providers for proper purposes but not informing them that she was also getting prescriptions from other doctors. On some occasions, Dr. Shapiro received prescriptions on the same day for 120 doses of oxycodone and 90 doses of morphine sulfate. Dr. Sucher stated that a number of people noted Dr. Shapiro to have slurred speech and confusion which likely indicates impairment. He added that there are occasions when patients have two pain medications; one is long-acting and the other is short-acting for breakthrough pain. Dr. Sucher added that Dr. Shapiro had had a lot of medication and it is clearly out of hand at this point. He stated Dr. Shapiro is now in a very similar state to when she presented to him years ago to begin monitoring.

Dr. Kaplan asked Dr. Sucher if he felt the allegation is substantiated with regard to Dr. Shapiro using medications for other than accepted therapeutic reasons. Dr. Sucher stated yes because if that were not the case there would not be so many people concerned due to their observations of her behavior, nor would there have been an issue with Dr. Shapiro's DUI charge.

Dr. Kaplan asked Dr. Sucher about Dr. Shapiro's current consent agreement which requires that she have one medical provider for all of her medications as it appears she has been receiving prescriptions from multiple providers. Dr. Sucher stated his understanding was that Dr. Shapiro was to have one provider who would coordinate her care and be aware of what all providers may be prescribing to her or treating her for. Ms. Penttinen clarified that Order paragraph F of the consent agreement has two parts: the first was the selection of one medical provider to oversee her prescriptions, and the second part was to provide a copy of the consent agreement to anybody who prescribed her any medication which Dr. Shapiro has admitted she did not do. Dr. Shapiro stated she verbally told her prescribers about her consent agreement but that has not been verified yet. Dr. Kaplan stated that in his opinion, someone who goes to this many doctors and has this many medications is not telling them (the prescribers about the consent agreement).

Ms. Miles asked Dr. Sucher if Dr. Shapiro's admission to Cottonwood was voluntary, which Dr. Sucher confirmed. Dr. Sucher also confirmed to Ms. Miles that Dr. Shapiro could leave the facility at any time against medical advice.

Dr. Leonetti stated he has reviewed the current consent agreement and agrees that Dr. Shapiro can go to more than one doctor for medications but there has to be one physician monitoring everything. He thought that Dr. Sucher was that monitoring person. Dr. Kaplan recalled a conversation Dr. Shapiro had with Ms. Penttinen which was recorded in which Dr. Shapiro stated she had been clearing everything through Dr. Sucher but he is uncertain if that is true. Dr. Sucher stated that Dr. Shapiro has made him aware of her medications; however, he has had concerns regarding the amounts of medications she was receiving. He added that anytime a person has a history of substance abuse there is always concern if they start taking medication which can become addictive. He said it appears that Dr. Shapiro's use of her current medications has gotten out of control.

Dr. Leonetti stated that in his review of the medications Dr. Shapiro has been receiving he does not know how she could be taking that much medicine and still be able to function. He referenced the police report for Dr. Shapiro's auto accident with DUI charge indicates Dr. Shapiro was unable to complete any field sobriety tests because the police officers were afraid she would fall and hurt herself. He further added that the auto accident happened at approximately 7:00 a.m. when Dr. Shapiro was on her way to work. He does not feel that she has been monitored closely enough. Dr. Sucher stated he received notifications of Dr. Shapiro's medications one at a time. It wasn't until he ran her pharmacy report that he became aware of how excessive her medications were. Dr. Sucher added that sometimes medications are changed and it is assumed that the previous medication was stopped but that does not appear to be the case here when looking at the bigger picture. Dr. Leonetti asked Dr. Sucher if there was a way to determine not just the type of medication a person is taking but also the amount. Dr.

Sucher stated that could be done. He said that he probably could have done a better job of catching this situation sooner but it appeared that Dr. Shapiro was managing her medications well up until about a month ago; it appears something changed at that time and it was shortly thereafter that he became aware of others' concerns for her.

Dr. Kaplan noted that Dr. Shapiro's office manager, who was interviewed by Ms. Penttinen, has been working with her for 22 years noticed changes and it was Dr. Shapiro's office staff that shut down her office and rescheduled her patients. He feels that indicates that this issue had been going on for a while. Dr. Campbell agreed. Dr. Sucher stated that what often happens when things like this occur is that information is discovered which either no one knew about or was not reported by anyone until a critical threshold was reached and at that point everything comes out.

Dr. Kaplan stated he feels Dr. Shapiro is in denial. In her conversation with Ms. Penttinen regarding the auto accident she had she stated she only hit one cone. However, the police report states she damaged five traffic signs and he finds this very concerning. Dr. Campbell asked about whether Dr. Shapiro was driving on a suspended license at that time. Ms. Penttinen clarified that Dr. Shapiro has denied that her license was suspended and that this particular charge has been dropped. However, Ms. Penttinen has not been able to confirm that yet as the critical issue in this case was the impairment. Dr. Kaplan agreed and added that at the time of the auto accident Dr. Shapiro was unable to stand, walk or speak clearly, and it is fortunate that no one was hurt.

Dr. Kaplan asked Dr. Sucher if a quantitative drug test could be done to determine the amount of medication a person was using. Dr. Sucher stated that could be done. He added that specific amounts do not necessarily indicate impairment but that there are therapeutic ranges which can be used for comparison. Ms. Galvin advised Dr. Kaplan that she believes Dr. Shapiro submitted to a drug test upon her admission to Cottonwood and they are in the process of determining the quantitative values. Ms. Penttinen clarified that she had requested that testing be done but it is unknown at this time if the lab will be able to do it. Dr. Sucher offered that the testing specimen could be taken to the lab he uses in order to conduct the quantitative test. The Board members did not have any further questions for Dr. Sucher and Dr. Sucher exited the meeting.

Dr. Kaplan stated he feels Dr. Shapiro has been making very poor decisions that are dangerous to the health of the public as well as herself. Ms. Penttinen asked Dr. Kaplan to clarify if it is the Board's finding that each of the four allegations is substantiated, which Dr. Kaplan confirmed.

MOTION: Dr. Kaplan moved to summarily suspend Dr. Shapiro's license effective immediately for three months and refer this case to a formal hearing for the revocation of Dr. Shapiro's license. Ms. Penttinen advised that a summary suspension does not have a specific time period but the Board is required to conduct the formal hearing within 60 days. Dr. Kaplan stated the reason he added a time period is that Dr. Shapiro can leave treatment at any time and go back to practicing, but if that is not necessary then his motion would be only for summary suspension as soon as possible and refer to a formal hearing. Ms. Penttinen asked Dr. Kaplan to confirm if he feels Dr. Shapiro presents an imminent danger to public health, safety and welfare which Dr. Kaplan confirmed. Ms. Penttinen also asked if Dr. Kaplan would like to include in his motion the option of offering Dr. Shapiro a consent agreement for the voluntary surrender of her license which, if accepted by Dr. Shapiro, would vacate the formal hearing. Dr. Kaplan agreed. Dr. Leonetti seconded the motion.

DISCUSSION: Dr. Kaplan asked if the Board could now discuss obtaining the quantitative values of Dr. Shapiro's drug test. Ms. Galvin advised that the summary suspension should be discussed and completed first. Ms. Penttinen asked Ms. Galvin if this would be an appropriate time for the Board to discuss Dr. Shapiro's previous disciplinary action from the Board which included similar allegations and violations. Ms. Galvin advised that it was appropriate as it is related to the disciplinary action that will be asked for at the formal hearing. Ms. Penttinen reviewed a consent agreement entered into between the Board and Dr. Shapiro under combined case number 95029 and 95015. In that agreement, Dr. Shapiro admitted the following violations: habitual intemperance in the use of alcohol or habitual substance abuse; use of a controlled substance or prescription-only drugs except if provided by a physician for use during a prescribed

lawful course of treatment; providing controlled substances or prescription-only drugs for other than accepted therapeutic purposes; and violation of any federal or state laws or rules and regulations applicable to the practice of podiatry. (There were also two violations which were unrelated to substance abuse.) Under the terms of that agreement, Dr. Shapiro was issued a Decree of Censure, was placed on probation for two and a half years, and was required to complete an outpatient substance abuse treatment program with relapse prevention counseling, along with various other non-substance-abuse-related requirements.

Dr. Kaplan asked if there was any further discussion. Ms. Miles stated she supports a summary suspension but is not ready to move towards revocation of Dr. Shapiro's license. She would like to conduct the formal hearing and have a recommendation made (by the administrative law judge) based on all evidence at that time. Ms. Miles stated she does not feel revocation is the only option at this point. Dr. Kaplan stated that this is the third incident of this nature for Dr. Shapiro, and he feels one of the most dangerous to come before the Board, and that is why he is seeking revocation. Dr. Kaplan stated he feels there is enough information to proceed in that direction. Dr. Campbell asked how long a license can be suspended. Ms. Galvin advised that under a summary suspension, a formal hearing must be done within 60 days; Dr. Shapiro's license would be suspended until the judge sends a recommendation and the Board makes a final decision. She added that the motion does not have to include whether the Board is seeking suspension or revocation but she did not think that had been included in the motion. It was clarified that the motion included a formal hearing for the purpose of revocation. Ms. Miles stated that there are many options available following a formal hearing such as an extended suspension or having a practice monitor and she does not feel revocation is the only option. There was brief discussion among the Board members regarding the process of the judge making a recommendation following the formal hearing and the Board's options in accepting, rejecting or modifying that recommendation. Ms. Miles stated that if the motion is specifically to go to formal hearing for only revocation then she would not support that. Ms. Penttinen asked Ms. Miles if the preferred language would be "revocation or other disciplinary action." Ms. Miles stated she disagreed with having anything in the motion about what the disciplinary action should be unless there it is legally necessary. Ms. Galvin advised that the Board's statutes state a case could be referred to a formal hearing for revocation or other disciplinary action. Dr. Kaplan stated that is what he wanted to do.

Ms. Penttinen asked if Dr. Kaplan was amending the motion to remove the option of offering the consent agreement for voluntary surrender. Dr. Kaplan stated yes; his motion is amended to include only the summary suspension and referral to formal hearing. Ms. Penttinen asked Dr. Leonetti if he agreed with the amendment. Dr. Leonetti stated he feels the option of voluntary surrender should remain because if Dr. Shapiro wants to take that option it would save the Board the time, effort and financial expense of a hearing. Dr. Shapiro has the option of not accepting the agreement and proceeding with the formal hearing. Dr. Leonetti added that he agrees with Dr. Kaplan that the formal hearing should be for revocation or other disciplinary action. Due to the complexity of the motion and discussion, Ms. Penttinen asked Ms. Galvin if it would be appropriate to withdraw the current motion and start a new motion. Ms. Galvin agreed. Dr. Kaplan agreed and withdrew his motion.

MOTION: Dr. Kaplan moved to summarily suspend Dr. Shapiro's license effective immediately and refer the matter to a formal hearing for revocation or other disciplinary action, and to offer Dr. Shapiro a consent agreement for the voluntary surrender of her license. Dr. Leonetti seconded the motion.

DISCUSSION: There was no further discussion.

VOTE: The motion passed unanimously by roll call vote.

IV. Call To The Public

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

V. Adjournment

MOTION: Dr. Kaplan moved to adjourn the meeting. Dr. Campbell seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote and the meeting was adjourned at 1:05 p.m.