



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

June 13, 2012; 8:00 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: Montgomery Lee

The Agenda for the meeting is as follows:

I. Call to Order

The meeting was called to order at 8:15 a.m.

II. Roll Call

Dr. Campbell was absent. All other Board members were present as were Ms. Penttinen and Mr. Lee.

III. Review, Discussion and Possible Action:

- a. 11-43-B – Elaine Shapiro, DPM: Motion for rehearing or review of Board Order issued for the revocation of Dr. Shapiro's license.

Assistant Attorney General Marc Harris had represented the board during the formal hearing for this case and was present representing the State. Assistant Attorney General Christopher Munns of the Solicitor General's Division was present to provide independent legal advice to the board. This matter was scheduled to begin at 8:00 a.m. The board allowed an additional 15 min. for Dr. Shapiro to appear before proceeding. Dr. Shapiro did not appear. Mr. Harris addressed the board regarding Dr. Shapiro's motion for a rehearing or review of the board's previous Order to revoke the license. The board members reviewed and discussed this matter as detailed in the transcript attached hereto.

MOTION: Dr. Kaplan moved to deny Dr. Shapiro's motion for a rehearing or review of this matter.
Ms. Miles seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by roll call vote.

IV. Review, Discussion and Possible Action on Administrative Matters:

- a. Review of license application for Jennifer Pappalardo, DPM and approval to sit for oral exam.
Ms. Penttinen reviewed for the board members the status of Dr. Pappalardo's new license application. Dr. Pappalardo had submitted the application and all necessary documentation within the required timeframe. However, she had difficulty obtaining her self-query report from the National Practitioner Data Bank. Dr. Pappalardo has submitted proof to Ms. Penttinen that she requested her report in March of this year, but the data bank did not process it until May 29th. The deadline to have all application materials was May 14. Ms. Penttinen stated she received Dr. Pappalardo's report on May 29th and it indicates that there've been no adverse actions taken against her license anywhere. Ms. Penttinen requested that the

board waive the application deadline and allow Dr. Pappalardo to sit for the oral exam today due to the delay being the fault of the National Practitioner Data Bank.

MOTION: Dr. Kaplan moved to approve Dr. Pappalardo's license application and allow her to sit for the oral exam today. Mr. Rhodes seconded the motion.
DISCUSSION: There was no discussion on the motion.
VOTE: The motion passed unanimously by voice vote.

V. Review, Discussion and Possible Action on Administrative Matters:

a. Administration of oral examinations for the following new license applicants:

Scott Bleazy, DPM
Peter Bregman, DPM
Michael Costantino, DPM
Jessica Duggan, DPM
Matthew Hinderland, DPM
Ronaldo Holgado, DPM
Mia Horvath, DPM
Adam Isaac, DPM

Nathan Jeppesen, DPM
Jennifer Pappalardo, DPM
Jessica Prebish, DPM
Ryan Scott, DPM
Tara Shirley, DPM
Andrew Straley, DPM
Ryan Wood, DPM

MOTION: Dr. Kaplan moved to go into Executive Session for the purpose of administering the confidential oral licensing examinations for the above-noted physicians. Dr. Leonetti seconded the motion.
DISCUSSION: There was no discussion on the motion.
VOTE: The motion passed unanimously by voice vote and the board adjourned into Executive Session at 8:22 a.m.

Executive Session adjourned at 8:51 a.m. and the board returned to Regular Session.

VI. Approval of Minutes

a. May 9, 2012 Regular Session Minutes.

Ms. Penttinen explained to the board members that after the draft minutes were sent out to them in their packets for this board meeting, she noted a number of spelling and punctuation errors which she has already corrected. The board members did not have any corrections regarding the substance of the minutes. However, Dr. Kaplan asked Dr. Leonetti if he had ever heard a term used by Dr. Polakof in her review of complaint case number 10-14-C. Dr. Polakof had stated that when she looked at pictures submitted by the patient following her surgery the incision sites appeared "slim," and Dr. Kaplan stated he had never heard that term before. Dr. Leonetti stated he had never heard that term before. Ms. Penttinen stated that she had reviewed the audio recording for that matter several times and that is what Dr. Polakof had stated, apparently meaning that the stitches had been placed well and the surgical site had been closed properly with minimal scarring.

MOTION: Ms. Miles moved to approve the minutes. Mr. Rhodes seconded the motion.
DISCUSSION: There was no discussion on the motion.
VOTE: The motion passed unanimously by voice vote.

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

There were no new complaints to review during this meeting.

VIII. Review, Discussion and Possible Action – Probation / Disciplinary Matters

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

Dr. Kaplan reviewed the monthly statement submitted by Dr. Bui which indicates that he did not have any charts to submit for durable medical equipment charges during the month of May 2012. The board members then reviewed an inspection report completed by Ms. Penttinen for an inspection she conducted at Dr. Bui's office on May 30, 2012. At the board's directive Ms. Penttinen had conducted the inspection to review patient charts and their associated billing codes. Ms. Penttinen had reviewed one

date of service for each of 10 patients which she chose at random from Dr. Bui's electronic patient scheduling software program.

Dr. Kaplan stated that he had some questions and concerns about the billing codes being used by Dr. Bui. Specifically, he noted that Dr. Bui does not appear to be billing for durable medical equipment including custom orthotics and he was curious about Dr. Bui's explanation that he sends patients who need custom orthotics to a company called Hanger Prosthetics and Orthotics. Drs. Kaplan and Leonetti also discussed whether or not Dr. Bui has the appropriate registration through Medicare to dispense durable medical equipment out of his office. This registration is not necessary for orthotics but is needed for dispensing other equipment such as boots and walkers. Dr. Kaplan asked Ms. Penttinen if she had specifically looked for that. Ms. Penttinen stated that upon her arrival at Dr. Bui's office, Dr. Bui was not present. His medical assistant allowed her to scroll through the electronic patient scheduling software for her to identify which patients' charts she would like to review. She selected 10 patients and asked the medical assistant to allow her to review those charts. It was at that time that Dr. Bui arrived and he told Ms. Penttinen that it would be very difficult for her to access the records because he did not have an extra computer for her to use. Dr. Bui did escort Ms. Penttinen to his office and she believed he was going to show her how to navigate the electronic medical record system and then allow her to review the records independently. However, Dr. Bui sat with Ms. Penttinen at his desk and insisted upon navigating the record system himself. Ms. Penttinen stated that Dr. Bui did show her the requested records for the dates of service that she specifically asked for but he was very hesitant to allow her to independently review the records. Dr. Leonetti asked Ms. Penttinen if she had requested of Dr. Bui to review multiple dates of service. Ms. Penttinen stated that in retrospect she should have done so, but in this situation she did not because she felt very awkward. She reviewed the specific CPT codes for the eight patients who had insurance and then asked Dr. Bui to see the actual chart notes for the other two patients who were cash pay. Dr. Bui did allow Ms. Penttinen to review the chart notes for those two patients, both of which contain references to having a cam walker. For one patient the note indicated the patient already had the cam walker at home; for the other Dr. Bui stated he sent the patient to Hangar and he showed Ms. Penttinen a scanned copy of the prescription.

Dr. Kaplan stated that he believes there are multiple dates of service for each of these patients. He then reviewed the CPT code 99213. He provided each of the board members with a detailed explanation of what that code is for which is an office visit of low complexity for an established patient. This code was used for each of the eight patients who were billed to insurance which means Dr. Bui had to have seen each of these patients on a prior occasion. Dr. Kaplan stated that he is concerned with Dr. Bui's use of this code because it must be qualified by two out of three of the following criteria: expanded problem, focused history; extended problem, focused exam; or low complexity medical decision-making. Dr. Kaplan stated that the patient would have to be experiencing a new problem in order to use this code; if Dr. Bui is using this code on every visit then he is using it improperly. Drs. Kaplan and Leonetti agreed that there is concern with the combinations of billing codes Dr. Bui is using which include 99213, 11721, 11042, and 11056. Both doctors also stated that they would like to see the complete patient charts for each of the 10 patients whose records were reviewed during Ms. Penttinen's inspection.

MOTION: Dr. Kaplan moved to issue a subpoena to Dr. Bui for complete patient charts including billing records on each of the 10 patients listed in Ms. Penttinen's inspection report. Dr. Leonetti seconded the motion.

DISCUSSION: Dr. Leonetti offered discussion in that he believes the board must be careful so as not to give the appearance that there is a "fishing expedition" or that Dr. Bui is being harassed by the board. The intent of the inspection had been to determine if Dr. Bui had been dispensing durable medical equipment from his office. Now it appears that there may be a problem with billing but he would like to ask for the opinion of the attorneys present to ensure that the board is not overstepping its bounds. Mr. Lee advised the board members that there are occasions when an inspection or investigation is conducted looking for one particular problem which ends up not being present; however, other concerns arise. He added that he does not see any problem with the board looking further into the billing issues that are of concern at this point. Mr. Lee added that an allegation of a "fishing expedition" or something of that nature might arise if the board chose to expand the scope of the inquiry and requested an additional 50 to 60 charts, but if it is limited to the initial 10 patient charts which were reviewed during Ms.

Penttinen's inspection than that should not be a concern. Dr. Kaplan stated that he agreed and that his concern is that he sees a pattern in these billing codes which may be similar to the improper billing practices for which Dr. Bui was placed on probation. Ms. Miles asked Dr. Kaplan to clarify that when the 99213 code is used it should not be coupled with the second code listed for each patient. Dr. Kaplan agreed. Ms. Miles also asked for confirmation of her understanding that when the other codes are used (not 99213), one would expect a billing code for a new patient not for an established patient. Dr. Kaplan stated that was correct. Dr. Leonetti added that there can be times when it is appropriate to couple the codes as Dr. Bui had done, but the documentation in the patient's chart must support that.

VOTE: The motion passed unanimously by voice vote.

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

Ms. Penttinen advised that the last report from Dr. Sucher was received last month so the next progress report will be due in August. She is not received any reports of noncompliance.

IX. Review, Discussion and Possible Action on Administrative Matters

a. Review of information regarding medical assistants and scope of practice in podiatry.

Dr. Kaplan reviewed a written summary provided by Dr. Campbell regarding duties of podiatric medical assistants. In her research, Dr. Campbell found that there is no national standard according to the American Society of Podiatric Medical Assistants. However, in many states medical assistants who receive certification through that society are allowed to assist a doctor in minor surgeries at their local hospital or surgical center which can range from ingrown nail removal to bunion surgery. Dr. Campbell noted in her summary that malpractice insurance companies require that podiatric medical assistants perform their duties in accordance with state and local regulations and that they have documented training and certification prior to performing technical supportive services.

Dr. Campbell listed the following generally accepted administrative tasks for podiatric medical assistants: ordering and storing supplies; stocking of exam rooms; cleaning treatment rooms; answering phones; scheduling appointments; and, greeting and checking in patients. Dr. Campbell listed the following clinical tasks: taking medical histories, taking and recording vital signs, explaining treatment procedures to patients, taking off patients' shoes and putting them back on, clipping toenails, applying bandages to the feet, preparing the patient for procedure, taking and developing x-rays, casting for orthotics and other orthopedic appliances, application of casts, performance of diabetic foot exams, performance of noninvasive peripheral arterial exams, administration of oral medications, assisting in foot surgery, making surgical packs, and administering physical therapy modalities.

Dr. Kaplan stated he agreed that the administrative and clinical tasks listed and Dr. Campbell's summary were appropriate for a podiatric medical assistant except for anything involving injections or a scalpel. Dr. Leonetti agreed. Dr. Kaplan clarified for Ms. Miles that the board receives frequent inquiries regarding what types of tasks a medical assistant can perform in a podiatry office, specifically if they are allowed to give injections. Dr. Leonetti added that the intent is to establish a board policy regarding what medical assistants can do but it would not be a statute change. Mr. Lee suggested that the board's desire to develop a substantive policy statement be documented by a board motion.

MOTION: Dr. Leonetti moved to have Ms. Penttinen draft a substantive policy statement regarding the administrative and clinical tasks that a medical assistant should be allowed to perform in a podiatry office as discussed above. Dr. Kaplan seconded the motion.

DISCUSSION: Upon discussion Ms. Miles suggested that the introductory information provided by Dr. Campbell not be included in the board's policy statement, only including the administrative and clinical tasks. The remaining board members were in agreement.

VOTE: The motion passed unanimously by voice vote.

b. Follow-up information on medication study by Premier Research.

Ms. Penttinen explained that, per the board's previous instruction, she went to the website for this research study and entered information as a patient to be considered for the study. She was later

contacted by a staff member of Premier Research and was screened for additional information to see if she qualified to be included in the study. That staff member was not able to provide Ms. Penttinen with any specific information about the surgical procedure that would be done. However, Ms. Penttinen was able to learn that the clinics which would be used in this study are medical facilities which are owned by Premier Research. She also learned that the podiatrist in the Phoenix area who would be performing the bunion correction surgeries was Dr. Tracy Marshall.

Ms. Penttinen spoke by phone with Dr. Marshall who explained that the procedure that would be done would not be a shaving of the bone but an actual correction of the joint. Dr. Marshall said he was aware of concerns that were raised by a previous similar study in which patients apparently had not been appropriately informed about the exact type of bunion correction procedure that would be done. Ms. Penttinen stated that Dr. Marshall was very cooperative and helpful in explaining the type of procedure that would be done and the entire patient experience for this medication research study. Dr. Marshall also offered to speak with the board at any time they feel necessary to address any concerns they may have.

Ms. Penttinen clarified for Dr. Leonetti that, although patients would be having a bunion correction surgery, the study is actually for an investigational pain medication. Patients will be kept in the research clinic for 72 hours while receiving the pain medication and will be monitored for things such as allergic reactions, effectiveness of the medication, or any other physiological reactions such as cardiac or respiratory problems. The board members were satisfied with the information that Ms. Penttinen obtained and did not have any further concerns.

c. Request for authority to supervise hyperbaric oxygen therapy submitted by Drs. Dahukey, Armstrong, Quint, Huston, Steck, and S. Hollander.

Dr. Kaplan stated that he had reviewed the information submitted by these physicians regarding supervision of hyperbaric oxygen therapy in the states of Connecticut and Texas. Ms. Miles stated she was uncertain why information from other states was submitted to this board. Drs. Kaplan and Leonetti stated it was likely an effort to demonstrate that other states' podiatric medical boards have approved their licensees to supervise this type of medical treatment. Dr. Kaplan stated he had some concerns and that in his opinion the only reason for a physician to want to supervise hyperbaric oxygen therapy is to be able to charge for it. Dr. Leonetti agreed and clarified that the medical facility would charge for the actual treatment and the physician would charge for supervising the treatment. Dr. Kaplan reviewed a statement from Connecticut's board which says, "A podiatrist licensed in the state of Connecticut who has received educational training in the administration of hyperbaric oxygen can medically treat the foot with hyperbaric oxygen therapy." He is concerned that there is some confusion in the distinction between ordering the treatment and actually administering the treatment. Dr. Leonetti stated that he found the same type of problem in the statutes from Alabama which state that a podiatrist can treat the foot with hyperbaric oxygen therapy. In his opinion, the way that Alabama's statute is written there is a loophole where the podiatrists have interpreted the ability to order this type of treatment as authorization to supervise the treatment. Dr. Leonetti added that some health care practitioners argue that physician assistants and nurse practitioners are allowed to conduct hyperbaric oxygen therapy on patients; however, those PA's and NP's are being supervised by a physician.

Dr. Leonetti reviewed the guidelines he found from the Center for Medicare/Medicaid services, ("CMS"), regarding this matter which is stated as the following: "Physicians are encouraged to obtain adequate training in the use of HBO therapy as well as both advanced cardiac life support and advanced trauma life support verification. The scope of practice of the supervising physician must include the ability to insert a chest tube and treat seizures. In addition, the physician's scope of practice must allow evaluation and treatment of sudden eardrum rupture and being able to distinguish between anxiety/claustrophobia and true serious shortness of breath." In essence, CMS requires that a supervising physician have within their scope of practice the ability to perform those types of treatment, if needed, which are clearly outside the scope of practice for a podiatrist. Mr. Rhodes asked the physician members how much atmospheric pressure is applied to the body during this type of therapy. Dr. Kaplan and Dr. Leonetti stated they were uncertain, and Dr. Leonetti added that there are training courses which teach people how to provide the therapy which lasts approximately one week. Dr. Leonetti also stated that PA's and NP's can insert chest tubes and treat eardrum ruptures because there being supervised by a physician.

Dr. Leonetti also reviewed information that he found from the American College of Hyperbaric Medicine which indicates that their criteria states a supervising physician must be an M.D. or D.O. and must be board certified in a recognized specialty. This college does not recognize podiatric physicians to supervise hyperbaric oxygen therapy. Dr. Leonetti also quoted an article written by Patrick DeHeer, DPM, for "Podiatry Today" in which Dr. DeHeer speaks against podiatrists being allowed to supervise this therapy because of the types of complications which can arise. Dr. Leonetti stated that he feels the only reason for podiatrists to be able to supervise this therapy is for financial gain. He added that he understands that podiatrists who order this therapy would like to be able to be reimbursed for it, which would be nice, but he does not feel it's appropriate for them to supervise the treatment. Dr. Kaplan asked how a supervising physician's medical malpractice insurance allows for this if there are so many complications. Dr. Leonetti stated that in order for a podiatrist to be covered on their malpractice insurance for supervising this therapy it would have to be approved by their state licensing board. Dr. Leonetti and Dr. Kaplan agreed that there is a distinction between treating the patient and supervising hyperbaric oxygen therapy. Dr. Kaplan added that a physician would have to be approved by the facility to supervise this type of treatment and asked if the treatment is done in a hospital. Dr. Leonetti stated that usually it is in the hospital however there are some freestanding clinics which are not hospitals or even outpatient surgical centers. Dr. Kaplan also asked, if this is something the board wanted to consider, whether the board's statutes would have to be opened to add this change.

Ms. Miles asked the physician members to confirm her understanding of this issue as follows: there is nothing within the board statutes or rules which prevents a podiatrist from ordering hyperbaric oxygen therapy treatment. However, it would not be within a podiatrist's scope of practice to supervise the administration of the treatment because the additional training and skills required to treat the potential complications are outside of a podiatrist's scope. Drs. Kaplan and Leonetti stated that was correct. Ms. Miles suggested that a substantive policy statement would be appropriate to state the board's position that it is within a podiatrist's scope of practice to order hyperbaric oxygen therapy but would not be within their scope to supervise the administration of the therapy for the reasons discussed above. Ms. Penttinen asked if the information quoted by Dr. Leonetti should be included. Ms. Miles stated it may not be necessary to go into extensive detail but to simply state the reasons discussed above such as the ability to insert a chest tube and treat a ruptured eardrum which are clearly outside of the podiatry scope of practice. Dr. Leonetti added that when the CMS guidelines were initially published they did not state that a person supervising this treatment had to be a physician or have any additional board certification. However, the guidelines have been modified to require the additional skills as previously discussed. Dr. Leonetti added that another argument which has been brought up is that in the hospitals and outpatient facilities where this treatment is being done there is usually a physician on duty somewhere, but he questions why that physician would not then be supervising this treatment. Ms. Miles agreed and stated that essentially a supervising physician could not rely on backup from another physician who was not present at the time that an emergency occurs. Dr. Leonetti agreed and stated that the current guidelines require the supervising physician to actually be present. Dr. Kaplan also asked how big the treatment chambers are. Dr. Leonetti stated that some hyperbaric chambers are for a single person but many can treat up to eight people at a time. Therefore, the supervising physician could be supervising multiple patients at the same time. Dr. Kaplan added that each patient could be receiving treatment for any variety of reasons and if he were the physician who referred one of this patient's he would be concerned about having a podiatrist inserting a chest tube into his patient. Dr. Leonetti added that in many cases the facilities, (in other states), which allow podiatrists to supervise this treatment do so because they want referrals from that podiatrist.

MOTION: Ms. Miles moved to have Ms. Penttinen draft a substantive policy statement for the board's review and approval which indicates that ordering hyperbaric oxygen therapy is within the scope of practice for a podiatrist; however, it is not within the scope of practice to supervise the administration of the treatment because the training and skills required to treat the potential complications of the treatment are outside of the scope of practice for podiatrists in Arizona. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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d. AzPMA requests for CME approval for upcoming association meetings.

The board members reviewed two requests submitted by the Arizona Podiatric Medical Association for CME approval. One is for a meeting on June 22-23, 2012 for one hour of credit regarding surgical management of Charcot Arthroplasty DVT prophylaxis, and the use of internal and external fixation. The second request is for the AzPMA meeting July 20-21, 2012 for six hours of credit for complications and foot surgery, forefoot reconstruction, and ankle arthritis treatment options.

MOTION: Ms. Miles moved to approve both CME requests. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

e. 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:

Steven Abrams	Julia Granone	Bradley Newswander
Raziuddin Ahmed	Todd Gunzy	Vu Nguyen
Kimberly Akkerman	Marisa Haddad	Brent Nixon
Jason Allen	William Harant	Robert Novack
Robert Andersen	Daniel Hatch	Sara Otero-Quintero
David Armstrong	Brad Hayman	Mary Peters
Shahram Askari	Carrie Hess	Tawnya Pfitzer
Darin Bocian	Steven Hollander	Arlene Polakof
Edward Bodmer	Daniel Hsu	Dedrie Polakof
Michael Brewer	Derek Hunchak	Jess Price
Randall Brower	Erica Huston	Scott Price
Ana Burns	David Jaffe	Hewitt Reese
Barbara Campbell	Sanford Kaner	Gordon Rheaurme
Alan Carlson	Barry Kaplan	Richard Robinson
John Charski	Ira Kaufman	Glen Robison
Sanford Chesler	Lee Keenen	Andrea Roemer
Teisha Chiarelli	Paul Keller	Bryan Roth
Donald Chudy	Edward Kelly	Maria Sangalang
Luke Cicchinelli	Ronald Killian	Payam Sarraf
Richard Cohen	Lester Klebe	Valerie Schade
Jeffrey Copoloff	Edalyn Ko	Timothy Sekosky
Scott Crampton	Morten Krahn	Donald Siegel
Heather Couch	Bruce Krell	Paul Selander
James Dancho	Janna Kroleski	Gilbert Shapiro
Michael Dershowitz	Jean Kroyn	Don Shumway
Alan Discot	Adam Kruczay	Peter Sidorik
Marvin Dobkin	Ladislav Kuchar	Shaun Simmons
Joseph Dobrusin	Robert Kuvent	Jerome Steck
Scott Evans	Kimberly Leach	Isidore Steiner
John Fiorino	William Leonetti	Kathleen Stone
Lewis Freed	Bruce Levin	Wesley Taxier
Darick Freestone	James Longton	Jodi Walters
Robert Fridrich	Adam Lu	Michael Warheit
Gary Friedlander	Ryan Mackey	Paul Warner
Erwin Friedman	John Marin	Jeffrey Weiss
Todd Galle	Robert Mendicino	Scott Wyant
Jay Glasser	Eduardo Montes	Wesley Yamada
David Gerstman	Kara Montes	Kerry Zang
Kelley Gillroy	Wayne Moyer	Lee Zeilsdorf
April Glesinger	Aprajita Nakra	Robert Zobel
Ike Gorman	Serjik Nazarian	

MOTION: Ms. Miles moved to withhold a vote on Dr. Fridrich's renewal application in order to obtain additional substantive information. Dr. Kaplan seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Dr. Kaplan recused himself from the review of his license renewal application.

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MOTION: Ms. Miles moved to approve the license renewal application for Dr. Kaplan. Dr. Leonetti seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

Dr. Leonetti recused himself from the review of the license renewal application for Dr. William Leonetti.

MOTION: Dr. Kaplan moved to approve the license renewal application for Dr. William Leonetti. Ms. Miles seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

MOTION: Dr. Kaplan moved to approve the renewal applications for all other physicians listed above. Mr. Rhodes seconded the motion.

DISCUSSION: There was no discussion on the motion.

VOTE: The motion passed unanimously by voice vote.

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

a. Open complaint status report.

Ms. Penttinen stated that she neglected to run a copy of the report. However, last month there were 56 open cases including those that were on the agenda that day, four of which were dismissed. There has only been one new complaint received within the last month.

b. Malpractice case report.

There were no new malpractice reports to review.

XI. Call To The Public

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

XII. Next Board Meeting Date:

a. July 11, 2012 at 8:30 a.m.

XIII. Adjournment

MOTION: Dr. Kaplan moved to adjourn the meeting. Ms. Miles 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 10:22 a.m.

1 DR. KAPLAN: We're going to be calling the
2 State Board of Podiatry Examiners to order at 8:15 a.m.

3 I'm going to do a roll call of the Board
4 Members. Barry Kaplan, President, present.

5 Joseph Leonetti.

6 DR. LEONETTI: Present.

7 DR. KAPLAN: Barbara Campbell, absent.

8 Elizabeth Miles.

9 MS. MILES: Present.

10 DR. KAPLAN: John Rhodes.

11 MR. RHODES: Present.

12 DR. KAPLAN: Sarah Penttinen, Executive
13 Director.

14 Monti Lee, are you going to be the Attorney
15 General today or is Chris going to do that?

16 MS. PENTTINEN: Chris will be doing the first
17 part.

18 DR. KAPLAN: Okay. Chris will be doing the
19 first part. Christopher Munns, Assistant Attorney
20 General, is present.

21 Roman Numeral III, Review, Discussion, and
22 Possible Action, Case 11-43-B, Elaine Shapiro, D.P.M.,
23 motion for rehearing or review of Board order issued
24 for the revocation of Dr. Shapiro's license, I'm going
25 to start the meeting for that.

1 This is the date, time, and place where the
2 request for rehearing or review filed by Elaine
3 Shapiro, D.P.M., is scheduled to be heard by the
4 Arizona Board of Podiatry Examiners, Case No. 11-43-B.

5 Will the parties please identify themselves
6 for the record, starting with counsel for the State?

7 MR. HARRIS: Dr. Kaplan, Members of the
8 Board, good morning. Marc Harris on behalf of the
9 State.

10 DR. KAPLAN: It appears that the defendant,
11 Elaine Shapiro, D.P.M., is not present at this meeting,
12 so we will proceed with testimony from Mr. Harris.

13 MR. HARRIS: Thank you.

14 Very briefly, Dr. Kaplan, Members of the
15 Board, in April you issued an order revoking
16 Dr. Shapiro's license to practice as a result of her
17 failure to comply with the consent agreement. In
18 essence, she relapsed. She has an addiction to
19 prescription medication.

20 She timely filed her motion for rehearing or
21 review, and in it she asked that the Board reconsider
22 its decision to revoke her license. These particular
23 proceedings are governed by your regulations regarding
24 motions for rehearing and review that are set forth in
25 Rule 4-25-401-C. Specifically, it sets forth six

1 reasons why the Board can grant a motion for rehearing
2 and review. It is Dr. Shapiro's responsibility and
3 burden to point out to you the reasons why she believes
4 she's entitled to a motion for rehearing. I submit to
5 you that she has not.

6 And in my responsive pleading to her request,
7 I set forth the reasons why I don't believe that she is
8 entitled to a motion -- to a rehearing. If you'd like,
9 I'd be more than happy to go through those six reasons.
10 Otherwise, I'd be more than happy to try to answer any
11 questions that you may have. In essence, I'm asking
12 that the Board deny her request. Thank you.

13 DR. KAPLAN: Does anybody on the Board have
14 any questions for Mr. Harris?

15 MS. MILES: No.

16 DR. KAPLAN: I don't have any questions, but
17 I would like it on the record that we have waited 15
18 minutes for Dr. Shapiro to present herself, and she has
19 not, and we're going to continue the proceeding
20 accordingly. So since there --

21 MS. MILES: Dr. Kaplan, I do have a question
22 for Ms. Penttinen.

23 MS. PENTTINEN: Yes.

24 MS. MILES: Ms. Penttinen, are the documents
25 that were sent to Board Members in their packet

1 regarding this matter the exact papers that were
2 forwarded to you from Dr. Shapiro?

3 MS. PENTTINEN: You're speaking about the
4 faxed documents?

5 MS. MILES: Correct. Her actual motion or
6 document requesting the rehearing.

7 MS. PENTTINEN: Yes. I noticed that there
8 were multiple transmissions and the way she numbered
9 the pages was odd and it was a little confusing, but
10 what you received in your packets was exactly what I
11 received from her.

12 MS. MILES: Okay. I don't have any other
13 questions.

14 MR. RHODES: Has Dr. Shapiro had any
15 documentation that she had encephalitis or anything
16 from her doctor or is it just hearsay from her?

17 MR. HARRIS: I have not received anything to
18 that effect. All I have is what you have, and those
19 are just her verbal representations.

20 DR. KAPLAN: Dr. Leonetti has a question.

21 DR. LEONETTI: Along those same lines, has
22 the State or the Board received any new information
23 that you did not have prior to the Board revoking her
24 license in regards to this case with Dr. Shapiro?

25 MR. HARRIS: The State has not. And with

1 respect to that, I would just like to point out that
2 her representations that are not substantiated are
3 contradicted by the evidence that was introduced at the
4 administrative hearing. That evidence included
5 treatment records from Sierra Tucson, as well as a
6 letter summarizing those treatment records, and
7 Dr. Sucher's position with respect to Dr. Shapiro's
8 ability to address her substance abuse issues.

9 MS. PENTTINEN: Mr. Harris, if I may offer a
10 correction, the facility was Cottonwood.

11 MR. HARRIS: Thank you. I think that's the
12 second time I've done that.

13 DR. KAPLAN: Are there any further questions?

14 MS. MILES: No, sir.

15 DR. KAPLAN: If there are no further
16 questions, then I would like to move that the Board
17 deny the request for rehearing or review from
18 Dr. Shapiro. Do I hear a second?

19 MS. MILES: Correct.

20 DR. KAPLAN: All in favor?

21 (The Board Members answered aye.)

22 DR. KAPLAN: I would like to take a roll call
23 vote.

24 Mr. Rhodes.

25 MR. RHODES: Yes.

1 DR. KAPLAN: Ms. Miles.

2 MS. MILES: Aye.

3 DR. KAPLAN: Dr. Leonetti.

4 DR. LEONETTI: Aye.

5 DR. KAPLAN: Dr. Kaplan, aye.

6 It's unanimous. Thank you very much for
7 coming.

8 MR. HARRIS: Thank you, Dr. Kaplan, Members
9 of the Board.

10 DR. KAPLAN: And proper documentation will be
11 sent to Dr. Shapiro.

12 MR. HARRIS: Appreciate that.

13 DR. KAPLAN: Thank you.

14 (The proceeding concluded at 8:21 a.m.)

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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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6 I, KATHRYN A. BLACKWELDER, Certified Court
7 Reporter No. 50666 for the State of Arizona, do hereby
8 certify that the foregoing printed pages constitute a
9 full, true and accurate transcript of the proceedings
10 had in the foregoing matter, all done to the best of
11 my skill and ability.

12
13 WITNESS my hand this 21st day of June,
14 2012.

15
16 
17 _____
18 KATHRYN A. BLACKWELDER
19 Certified Court Reporter
20 Certificate No. 50666
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