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The Florida Board of Podiatric Medicine held a meeting on Friday, February 3, 2017, commencing at 9:11 a.m. This meeting was held at the Best Western Gateway Grand, 4200 NW 97th Boulevard, Gainesville, FL 32606, (352) 331-3336. Participants in this public meeting were made aware that these proceedings were being recorded and that an audio file of the meeting will be posted to the board’s website.

AGENDA

General Board Business started at 9:04 a.m.

I. CALL TO ORDER (Roll Call):

Board Chair, Chet Evans called the meeting to order at 9:11 a.m.

Gail Curry called the roll.

MEMBERS PRESENT:

- Chet Evans, M.S., D.P.M., Chair
- Joseph Sindone, D.P.M., Vice-Chair
- Mark S. Block, D.P.M.
- Joseph Strickland, D.P.M.
- Robert Morris, Ph.D.
- James Pearce, BBA, MBA

STAFF MEMBERS PRESENT:

- Anthony B. Spivey, DBA, Executive Director
- Gail Curry, Program Operations Administrator
- Adrienne Rodgers, BSN, JD, Bureau Chief, MQA

BOARD COUNSEL:

- Mary Ellen Clark, Senior Assistant Attorney General
- Office of Attorney General

PROSECUTION COUNSEL:

- Judson Searcy, Attorney
- Division of Medical Quality Assurance

COURT REPORTER:

- American Court Reporting

AUDIO VISUAL:

- Vanguard Audio Visual

1 **MEMBERS ABSENT:**

2 Scott Koppel, DPM, Vice-Chair
3 Dr. Koppel tendered his resignation yesterday.

4
5 **Action:** Approval of the Agenda was made by Dr. Block. Second by Dr. Strickland.
6 Vote: 6 yeas; 0 opposed, motion carried.

7
8 **Section II started at 9:11 a.m.**

9
10 **II. APPROVAL OF MINUTES:**

11
12 a. September 9, 2016 - draft

13
14 **Action:** Motion to approve the minutes as submitted was made by Mr. Pearce. Dr.
15 Sindone seconded.

16 Vote: 6 yeas; 0 opposed, motion carried.

17
18 b. November 15, 2016 - draft

19
20 **Action:** Motion to approve the minutes as submitted was made by Dr. Sindone. Second
21 by Dr. Block.

22 Vote: 6 yeas; 0 opposed, motion carried.

23
24 **Section II ended at 9:13 a.m.**

25 **Section III started at 9:13 a.m.**

26
27 **III. FINAL ORDER ACTION:**

28
29 **a. Settlement Agreement**

30
31 **i. Sheila Brooks**

32 Not present/not represented by counsel.

33
34 Dr. Block is recused due to his participation on the Probable Cause Panel.

35
36 Judson Searcy withdrew the settlement case due to Dr. Brooks not being present at the
37 meeting. Her attendance was a requirement of the settlement agreement.

38
39 Mr. Searcy gave the details of the case.

40
41 **Discussion:** Ms. Clark advised the Board to accept the settlement then her license would
42 be suspended and she would be required to pay the \$1,000 fine. Then a disciplinary case
43 would need to be opened for her failure to appear before the Board.

44
45 **Action:** Dr. Sindone made a motion to hear the details of the case presented by Judson
46 Searcy.

1
2 **Action:** Motion to accept the Settlement Agreement was made by Dr. Sindone. Second
3 by Mr. Pearce.

4
5 **Discussion:** There was some discussion about her appearance at this meeting and the
6 appearance being waived. Dr. Evans believes Dr. Brooks should have been at this
7 meeting. Dr. Sindone agrees that this is not a waiver of her appearance.

8
9 **Vote:** 5 yeas; 1 opposed, Dr. Morris, motion carried.

10
11 **b. Voluntary Relinquishment**

12
13 **i. Douglas Kahn**

14 Present/not represented by counsel.

15
16 Dr. Kahn is before the Board for failure to report within the 30 day requirement of an
17 arrest.

18
19 Ms. Clark asked Dr. Kahn if he wanted to make the argument that the facts don't in fact
20 constitute violate Chapter 461 or does he wish to be heard regarding the penalty?

21
22 **Action:** Motion to approve the Finding of Facts and Conclusions of Law those set forth
23 in the Administrative Complaint was made by Dr. Sindone. Second by Dr. Strickland.
24 **Vote:** 6 yeas; 0 opposed, motion carried.

25
26 Disciplinary guidelines were for the first count was presented to the Board by Judson
27 Searcy.

28
29 Dr. Kahn addressed the Board.

30
31 **Action:** Motion to revoke the license with no ability to reapply was made by Dr. Evans.
32 Second by Dr. Strickland.

33
34 Roll Call:

35 Dr. Strickland – Yes

36 Dr. Sindone – No

37 Dr. Morris – No

38 Mr. Pearce – No

39 Dr. Block – Recused

40 Dr. Evans – Yes

41
42 **Vote:** 2 yeas; 3 opposed; motion does not pass.

43
44 **Action:** Motion to have disciplinary action approved for Dr. Kahn to have two year
45 probation with the appropriate fine of \$1,000 for each count, this would be \$2,000, CE
46 for 5 hours of prescription writing for narcotics within two years and take the Florida

1 Laws and Rules. Costs of \$192.90 be paid within 90 days was made by Dr. Sindone.
2 Second by Dr. Morris.

3
4 **Discussion:** Dr. Strickland suggested monitoring. Dr. Sindone believes it is an
5 educational issue. Dr. Sindone would suggest monitoring of prescription writing and
6 record keeping every 6 months.

7
8 **Action:** Dr. Sindone is amending the original motion to include having Dr. Kahn obtain a
9 DPM to monitor him and be present at the next board meeting to accept the responsibility
10 of the monitoring.

11
12 Ms. Clark summarized the motion. The penalty is for a reprimand, 2 years monitored
13 probation by a board approved monitor, with the approval process to include submitting
14 to the Board the doctor's CV the Board will delegate to the Board Chair the approval of
15 the monitor such that the doctor and the monitor will appear at the next board meeting.
16 Monitoring to cover the 2 year probation and the monitor will submit a report to the
17 Board at least every 6 months. There will be a fine of \$2,000 and a cost of \$192.09
18 payable within 90 days. The doctor will complete an additional 5 hours of Continuing
19 Education with the emphasis on prescription writing in narcotics within 2 years of entry
20 of the Final Order.

21
22 **Roll Call:**

23 Dr. Strickland – Yes

24 Dr. Sindone – Yes

25 Dr. Morris – Yes

26 Mr. Pearce – Yes

27 Dr. Block – Recused

28 Dr. Evans – No

29 Vote: 4 yeas; 1 opposed; Dr. Evans; motion passes.

30
31 **Section III ended at 9:43 a.m.**

32 **Section VI started at 9:43 a.m. (Taken out of order)**

33
34 **VI. PROSECUTION REPORT:**

35
36 Mr. Searcy gave the Prosecution Report as follows.

37 Total Complaint Inventory as of February 2, 2017.

38 Complaints under review: 14

39 Complaints for probable cause: 2

40 Complaints where probable cause has been found: 6

41 Complaints submitted for final action: 4

42
43 Mr. Searcy asked the board to allow Prosecution Services to continue prosecuting cases
44 over 1 year old.

45

1 **Action:** Dr. Sindone motioned to allow prosecuting cases over 1 year old. Second by Dr.
2 Strickland.

3 Vote: 6 yeas /0 opposed, motion passes

4
5 **Section III ended at 10:25 a.m.**

6 **Break 10:25**

7 **Meeting resumed at 10:37a.m.**

8
9 Dr. Evans introduced Karen Lambert from the Florida Podiatric Association. Chris
10 Hanson, General Counsel also with the FPOD Association, was introduced.

11 A brief discussion on the 2017 Association meeting held in Orlando.

12
13 Dr. Martha Brown from PRN was also introduced. Dr. Brown announced that Dr. Alexis
14 Polles will be the new director.

15
16 **Section VI ended at 10:41 a.m.**

17 **Section IV started at 9:41 a.m.**

18
19 **IV. APPLICANTS PRESENTED FOR BOARD REVIEW:**

20
21 **a. Dr. Christopher Hyer**

22 Not present

23
24 Dr. Hyer had Medical Malpractice claims on his record. The information was received in
25 the board office on December 14, 2016. The application is before the Board for review.

26
27 Dr. Hyer's application was tabled until later in the meeting while the board staff seeks the
28 discipline history on his prior license number.

29
30 **b. Dr. Lillam Lemell**

31 Not present

32
33 Dr. Lemell is requesting to not take Part I and II of the exam and only take Part III. At the
34 previous meeting she was asked to obtain a response form the testing vendor showing
35 that they would allow her to only take Part III. That document has been received and is in
36 IViewer for the Board's review.

37
38 **Discussion:** After review of the document by the Board it was determined that Part I and
39 II would be waived and she would be allowed to take only Part III.

40
41 **Action:** Motion to grant her Petition of Variance and Waiver as presented was made by
42 Dr. Sindone. Second by Dr. Strickland.

43
44 **Discussion:** Amend the motion to include that the letter from the appropriate board
45 stating they agree to administer part III without taking Part I and II. Dr. Morris thinks that

1 her years in practice without any adverse discipline history should be added to the
2 motion. Dr. Sindone agrees with the amended motion.

3
4 **Roll Call:**

5 Dr. Strickland – Yes

6 Dr. Sindone – Yes

7 Dr. Morris – Yes

8 Mr. Pearce – Yes

9 Dr. Block – Recused

10 Dr. Evans – No

11
12 Vote: 6 yeas /0 opposed; motion passes

13
14 **Section V ended at 10:52 a.m.**

15 **Section VI started at 10:52 a.m.**

16
17 **IV. RATIFICATIONS:**

18
19 a. Licensure -

20
21 i. Podiatric Physicians Dr. Hyer’s license, 3874, was issued in error and should have been
22 pulled off the ratification list.

23
24 Action: Motion to pull Dr. Hyer’s license number 3874 off of the ratification list until
25 later in the meeting and approve Podiatric Physicians license numbers 3866 – 3873 and
26 3875 - 3879 was made by Dr. Sindone. Second by Dr. Morris.

27 Vote: 6 yeas /0 opposed; motion passes

28
29 ii. Certified Podiatric X-Ray Assistants 1909 – 1911

30
31 **Action:** Motion to approve Certified Podiatric X-Ray Assistants licenses number 1909 –
32 1911 was made by Dr. Sindone. Second by Dr. Morris.

33 Vote: 6 yeas /0 opposed; motion passes

34
35 a. Continuing Education

36
37 i. Providers & Courses approved by CE Committee

38 ii. Providers & Courses approved by Board Staff

39
40 **Action:** Motion to approve Continuing Education Providers as submitted was made by
41 Dr. Sindone. Second by Dr. Strickland.

42 Vote: 6 yeas /0 opposed; motion passes

43
44 **Section IV ended at 11:09 a.m.**

45 **Section VII started at 11:09 a.m.**

46

1 **VII. CHAIR/VICE CHAIR REPORT:**

2 Dr. Evans - No report other than what was discussed today.

3
4 **Section VII ended at 11:10 a.m.**

5 **Section VIII started at 11:10 a.m.**

6
7 **VIII. EXECUTIVE DIRECTOR'S REPORT:**

8
9 **a. Letter to Honorable Rick Scott dated April 18, 2016**

10
11 FYI

12
13 **b. Letter to Honorable Rick Scott dated December 6, 2016**

14
15 FYI

16
17 **c. Anti-Trust Issue**

18
19 The board members discussed their concerns, which had been expressed in two letters
20 presented by the board to Governor Scott in April and December 2016, regarding their
21 potential personal liability exposure in the event of an anti-trust suit. The Bureau Chief
22 for Health Care Practitioner Regulation, Ms. Adrienne Rodgers, explained the difference
23 between the attorney general's presentation in 2015, which stated that there was no
24 defense provided for board members in the event of an anti-trust suit through DFS Risk
25 Management, and the actuality that s. 456.008(2), Florida Statutes, requires the
26 department to provide a legal defense in the event of any lawsuit, including an anti-trust
27 suit. She advised, however, if damages were awarded in an anti-trust suit, personal
28 liability exposure for a board member still exists. The board members were advised that
29 their board counsel is well qualified to guide them in addressing potential anti-trust
30 situations, helping them avoid matters that may involve an anti-trust suit, and that the
31 OLA Anti-trust Division was also available for input and insight on more questionable
32 issues. Ms. Rodgers concluded by saying that Governor Scott is aware of the situation
33 and he is working diligently with the Legislature to address the concerns of the
34 boards. Upon conclusion of the presentation Dr. Chet Evans, the board chair, tendered
35 his resignation following the resignation of Dr. Scott Koppel.

36
37 **d. Rule Reduction**

38
39 The Governor has asked for another rule reduction exercise. Please think about any
40 possible rules you may be able to be reduced.

41
42 **e. Dr. Lazar email**

43 Dr. Lazar wanted to attend the meeting by Skype. Dr. Spivey addressed the issue telling
44 Dr. Lazar that Skype access would have to be provided to everyone. That is not possible
45 so he must attend the meeting in person. Skype therefore the meeting must be attended in
46 person.

1
2 **f. 50 mile radius discussion**
3

4 This is general information that when you are attending a meeting that is within a 50 mile
5 radius of your residence your hotel will not be paid. You are welcome to stay at the hotel
6 but the cost will have to be paid by you. Board members will be able to get the state rate.
7

8 **Action:** Motion to accept the Executive Director’s Report as submitted was made by Dr.
9 Sindone. Second by Dr. Block.

10 Vote: 6 yeas /0 opposed; motion passes.
11

12 **Section VIII ended at 11:50 a.m.**

13 **Section IX started at 11:50 a.m.**
14

15 **IX. BOARD COUNSEL’S REPORT:**
16

17 **a. Rules Report January 2017**
18

19 Ms. Clark reported that the four rules that were worked on in the fall were effective in
20 November. Disciplinary Guideline Rule, 64B18-14.002, F.A.C., needs to have a new
21 guideline added that was created by legislation adding new violations. When reviewed by
22 the Joint Administrative Procedures Committee there were concerns found. The
23 December 19 letter shows the change that needs to be made.
24

25 **Action:** Motion to notice the change and approve the language in today’s agenda was
26 made by Dr. Sindone. Second by Dr. Block.

27 Vote: 6 yeas /0 opposed; motion passes.
28

29 Ms. Clark asked Statement of Estimated Regulatory Cost (SERC) Question. Will the
30 proposed Rule amendment have an adverse impact on the small business or be likely to
31 directly or indirectly increase regulatory cost to any industry including Government in
32 excess of \$200,000 in the aggregate in Florida within 1 year of after the implementation
33 of the rule.
34

35 **Action taken:** Motion that the approved changes would not require a preparation of a
36 Statement of Estimated Regulatory Cost was made by Dr. Sindone. Second by Dr. Block.

37 Vote: 6 yeas / 0 opposed; motion passes.
38

39 **b. Quasi-Judicial and Quasi-Legislative**
40

41 There is a power point in the agenda that speaks to the Quasi-Judicial and Quasi-
42 Legislative responsibilities. This was presented at the Chair/Vice Chair meeting and is
43 included in the agenda for you to reference.
44

45 **Action:** Motion to notice the change and approve the language that was in today’s agenda
46 was made by Dr. Sindone. Second by Dr. Block.

1 Vote: 6 yeas /0 opposed; motion passes.

2

3 **Action:** Motion to accept the Board Counsel's Report was made by Dr. Morris. Second
4 by Dr. Block.

5 Vote: 6 yeas /0 opposed; motion passes.

6

7 **Section IX ended at 11:55 a.m.**

8 **Section X started at 11:55 a.m.**

9

10 **X. COMMITTEE REPORTS:**

11

12 **a. Budget – Robert Morris, Ph.D.**

13 Nothing to report at this time.

14

15 **b. Continuing Education – Scott Koppel, D.P.M.**

16 **Scott Koppel, D.P.M. is being replaced by Dr. Sindone.**

17 Nothing to report at this time.

18

19 **c. Credentials – Scott Koppel, D.P.M**

20 **Scott Koppel, D.P.M. is being replaced by Dr. Sindone.**

21

22 **The Board went back to Dr. Hyer's application.**

23

24 What is the discipline history issued in 2002? There is no discipline action on his old
25 licensure. Dr. Hyer relinquished his license due to not renewing on time.

26

27 **Action:** Motion to bring off the table Dr. Hyer's application to the State of Florida for
28 licensing in Podiatric Medicine was made by Dr. Sindone. Second by Dr. Block.

29 Vote: 6 yeas /0 opposed; motion passes.

30

31 **Action:** Motion to accept the application of Dr. Hyer's for application in Podiatric
32 Medicine in the State of Florida was made by Dr. Sindone. Second by Dr. Block.

33 Vote: 6 yeas /0 opposed; motion passes.

34

35 **d. Disciplinary Compliance – Joseph Strickland, D.P.M**

36 Nothing to report at this time.

37

38 **e. Examination – Chet Evans, D.P.M.**

39

40 Nothing to report at this time.

41

42 **f. Healthy Weight – Chet Evans, D.P.M.**

43

44 There is continued work and the State and Board levels to support the initiative.

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g. Legislative – Scott Koppel, D.P.M.
Scott Koppel, D.P.M. is being replaced by Dr. Strickland.

Information received from the FMPA and our Executive Director on legislative issues and discussion.

h. Probable Cause – Mark Block, D.P.M

We continue to chip away at the number of cases. He thanks prosecuting attorney for assisting in this effort.

i. Residency Programs – Joseph Sindone, D.P.M

All Residency Programs are in compliance.

j. Rules – Chet Evans, D.P.M.

Report was given earlier in the agenda. Please keep in mind any rules that can be reduced.

k. Unlicensed Activity – Robert Morris, Ph.D.

There is no unlicensed activity at this time.

Action taken: Motion to approve the Committee Report was made by Dr. Block. Second by Dr. Sindone.

Vote: 6 yeas / 0 opposed; motion carried

Section X ended at 12:03 a.m.
Section XI started at 12:03 a.m.

XI. OLD BUSINESS:

None at this time.

Section XI ended at 12:04 a.m.
Section XII started at 12:04 a.m.

XII. NEW BUSINESS:

Dr. Evans thanked the guests for attending today and for their input to the meeting.

Section XII ended at 12:05 a.m.
Section XIII started at 12:05 a.m.

1
2 **XIII. NEXT MEETING DATE:**

3
4 May 5, 2017 – Orlando

5 July 14 - Orlando

6 December 8 – Orlando

7
8 **Section XIII ended at 12:05 a.m.**

9 **Section XIV started at 12:14 a.m.**

10
11 **XIV. 2018 PROPOSED MEETING DATES:**

12
13 February 23, 2018

14 May 4, 2018

15 July 13, 2018

16 November 2, 2018

17
18 Board Members will confirm or deny 2018 meeting dates within 2 weeks.

19
20 Dr. Sindone asked about the length of the telephone conference calls. Ms. Clark
21 explained that the telephone conference calls are considered a full Board Meeting not a
22 mini meeting. Board members should plan accordingly.

23
24 Dr. Chet Evans tendered his resignation, starting at the conclusion of today's meeting,
25 due to the Anti-trust issues. He thanked the Board and the Board staff for their service.

26
27 **Section XIV ended at 12:15a.m.**

28 **Section XV started at 12:15 a.m.**

29
30 **XV. ADJOURNMENT:**

31
32 **Action:** Motion to adjourn was made by Dr. Sindone. Second by Dr. Block.

33 Vote: 6 yeas /0 opposed; motion passes.

34
35 **Meeting was adjourned at 12:16**

36