

Board of Registration of Podiatry
1000 Washington Street, Boston, MA 02118
Minutes of September 8, 2015

Members Present:

Dr. Raymond Murano, Chair
Dr. Kenneth Leavitt, Member
Dr. LeRoy Kelley, Member

Administrative Staff Present:

Ann-Margarette Barry, Executive Director
Ann Driscoll, RN, Investigative Supervisor
Sheila York, Board Counsel

Dr. Murano, the Chair, opened the meeting at 10:25am.

Executive Director Ann Barry informed attendees of the evacuation procedures and location of the restrooms.

Vote on Minutes of June 9, 2015: A motion to approve the minutes was made by Dr. Kelley, seconded by Dr. Leavitt and unanimously adopted by the Board.

A motion to suspend the public meeting and enter closed session under G.L. c. 112, s. 65C for the purpose of discussing settlement terms relating to PD-15-004 and the following investigative matters: PD-15-019, Insurance notification – MC, was made by Dr. Kelley, seconded by Dr. Leavitt, and unanimously adopted by the Board.

Investigator Ann Driscoll left the room for the discussion of PD-15-004 (RD).

Public Session resumed.

Report of Actions taken in Closed Investigative Conference:

Settlement Discussions:

PD-15-004(RD)– A motion to dismiss the case was made by Dr. Kelley, seconded by Dr. Murano and unanimously adopted by the Board.

Investigator Ann Driscoll returned to the Board meeting.

Complaints:

- (a) **PD-15-019 (KL)**: A motion to dismiss the case was made by Dr. Leavitt, seconded by Dr. Murano and unanimously adopted by the Board.

- (b) **Insurance notification – MC:** A motion to open a complaint was made by Dr. Murano, seconded by Dr. Leavitt and unanimously adopted by the Board.

Compliance Monitoring:

- (a) **Marshall Taitz (PD-11-005 and PD-13-001):** The Board reviewed the Licensee's letter, dated April 6, 2015, requesting to eliminate the monitoring requirement of the Consent Agreement as he will no longer be treating patients and to approve a continuing education course ("Current Trends in the Management of Foot, Ankle, & Leg Disorders") for the Consent Agreement. The Board recognizes that Licensee cannot be monitored if not actively treating patients, however, pursuant to the terms of his Consent Agreement, Licensee shall remain on probation and must complete the monitoring component prior to terminating the probation. All other requirements of the Consent Agreement remain in effect. Attorney York asked the Board whether it would like a written statement from the licensee regarding his plans for his podiatry business now that he is no longer actively treating patients and also whether the Board wants a report from the current monitor verifying that the licensee had appropriately transferred patients. The Board chose not to request those statements. The Board also approved the continuing education course submitted by the Licensee. Attorney York shall send the Licensee a letter as to the Board's decision.

Executive Director's Report to the Board: None

Board Counsel's Report to the Board:

- (a) **Delegation of Authority:** Attorney York presented the Board with the below Delegation of Authority:

- 1. This Delegation will Allow Staff to sign OTSCs, Consent Agreements and Final Decisions consistent with terms previously specified by Board.**

Dr. Kelley moves, seconded by Dr. Murano, and unanimously adopted by the Board.

to delegate the authority to execute Order to Show Cause Notices, Consent Agreements, and Final Decisions on behalf of the Board and to sign off on case closings primarily to the Board's Executive Director and secondarily to the Deputy Director of Policy and Boards of the Division of Professional Licensure, or in the extended absence of both the Executive Director and the Deputy Director to Board Counsel, provided the terms and/or charges are consistent with those previously approved by the Board at a meeting and approved by the Chair or his or her designee. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

- 2. This Delegation will Allow Staff to sign Summary Suspension orders where Chair has approved such an order because the licensee presents an immediate threat to the public safety or welfare:**

Dr. Kelley moves, seconded by Dr. Murano, and unanimously adopted by the Board.

to delegate the authority to issue a written Order of Summary Suspension, pending a 10-day hearing pursuant to G.L. c.112, §65B, primarily to its Executive Director and secondarily to the Deputy Director of Policy and Boards at the Division of Professional Licensure or in both those individual's extended absence to Board Counsel, after determining, in consult with the Chair and based upon credible sworn affidavits and documentary evidence, that a licensee's continued practice poses an immediate and serious threat to the public health, safety, or welfare. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

- 3. This Delegation of Authority will Allow DPL Hearing Officers to hold evidentiary hearings and issue tentative decisions that will be reviewed by Board.**

Dr. Kelley moves, seconded by Dr. Murano, and unanimously adopted by the Board.

to delegate the authority to act as a Presiding Officer for all adjudicatory proceedings, conducted pursuant to 801 Code Mass. Regulations. §§1.00 et seq., in all cases where the Board has voted to issue an Order to Show Cause or where an Order to Show Cause will be issued, to a Division of Professional Licensure Hearings Officer. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

- 4. This Delegation will allow staff to issue Final Decision and Orders By Default:**

Dr. Kelley moves, seconded by Dr. Murano, and unanimously adopted by the Board.

to delegate authority primarily to the Board's Executive Director and secondarily to the Deputy Director of Policy and Boards, or in the extended absence of both the Executive Director and the Deputy Director, to Board Counsel to issue a Final Decision and Order by Default ordering revocation of the Respondent's license to practice, or in the case of an unlicensed Respondent, assessing the maximum fine permitted by law, in cases where a DPL Hearing Officer has entered a finding of

default against the Respondent. This delegation of authority shall remain in effect and force unless and until overridden by a subsequent vote of the board.

(b) Review Public Comments from listening session (Governor's Executive Order 562):

Attorney York reviewed the public comments with the Board:

1. Attorney York noted that the Mass. Society of Radiological Technologists (MSRT) submitted oral and written comments, which raised concern regarding provisions in the Board's current regulation 249 CMR 4.01, which permits a podiatrist to delegate the taking of x-rays to assistants who do are not licensed as Radiological Technologists. MSRT further commented that the Podiatry regulations are in conflict with Mass Gen Law c. 111, s. 5N and 105 CMR 125.000 and 105 CMR 120.403.
2. Attorney York noted that the Mass. Podiatric Medicine Society (MPMS) also submitted comments regarding podiatrists and, under the podiatrist's supervision, podiatric assistants administering limited x-rays. MPMS states that current Board regulations are consistent with state law, which permits podiatrists to delegate the taking of x-rays to their staff who do so under the podiatrist's supervision, see G.L. c. 111, s. 186A. MPMS further notes that there has been no empirical evidence submitted that shows either podiatric assistants or their patients are being harmed by the existing practices. Also, MPMS commented that the statute cited by MSRT restricts DPH from preventing or restricting the practice, services and activities of a podiatrist. See G.L. c. 111, s. 5L.

Dr. Leavitt asked whether the Board had received any complaints concerning unsafe x-ray practices by podiatrists or their assistants. Staff could not recall any x-ray related complaints. Dr. Murano asked Attorney York whether the DPL continued to have discussions with DPH regarding this issue. Attorney York stated that she considered the discussions with DPH to be ongoing. Board Members considered the comments received and the goals of the EO 562 review process and concluded that no changes to 249 CMR 4.01 were warranted at this time.

3. Attorney York discussed comments submitted by the Massachusetts Orthopedic Association ("MOA"), which opined that the Board's current scope of practice regulations exceed the Board's statutory authority. Specifically, the MOA asserts that allowing podiatrists perform surgery on the ankle and perform an Achilles

tendon lengthening and tendon transfers is outside the Board's statutory authority. The Board members noted that the regulations at issue have been in effect for fifteen years and are, in their opinion, consistent with the licensing statute. Board members considered the comments received and the goals of the EO 562 process and concluded that no changes to the scope of practice regulations were warranted at this time.

4. Attorney York noted that the MPMS also identified regulations that should be changed to reflect modern terminology or may no longer be necessary. The Board had reviewed these comments when they were first submitted in the Spring of 2014 and already incorporated many of the suggested revisions in to the Board's proposed regulation changes which will be submitted as part of the EO 562 process.

(c) **Clarification of Residency Requirement:** Attorney York requested guidance from the Board as to the Board's residency requirement for licensure. She asked whether a minimum of one year residency is a requirement for Board approval. The Board acknowledged that the majority of residency programs are two (2) to three (3) years in length but stated that a one (1) year residency requirement is sufficient.

Open Session for Topics not reasonably anticipated by the Chair 72 hours in advance of meeting:

Dr. Murano, the Board's Chair, noted that he met with Senior Staff at the DPL to discuss the Board. The DPL seeks to meet with all Board Chairs.

Dr. Murano stated that Senior Staff suggested that the Board consider deleting the requirement in its regulations that Board Investigator provide 24 hour advance notice prior to conducting any inspection of a podiatric office. The Board discussed the history behind this requirement and declined to propose any change to this requirement.

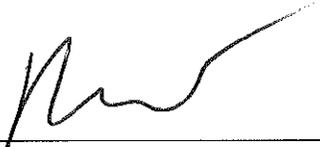
List of Documents Used at the Public Meeting:

1. Agenda dated September 8, 2015
2. Minutes dated June 9, 2015
3. Letter by Marshall Taitz (PD-11-005 and PD-13-001) dated April 6, 2015 and continuing education course certificate: ("Current Trends in the Management of Foot, Ankle, & Leg Disorders")
4. Delegation of Authority

5. Sign-in Sheet for the Board's Listening Session held on June 9, 2015 pursuant to Executive Order 562
6. Public written comments received for Board's Listening Session held on June 9, 2015 pursuant to Executive Order 562

Dr. Murano made a motion to adjourn the meeting at 11:25am, seconded by Dr. Kelley and unanimously adopted by the Board.

Respectfully submitted,



Dr. Raymond Murano, Chair
Podiatry Board