State Board of Podiatry February 28, 2024

BOARD MEMBERS:

Eric B. Greenberg, D.P.M., J.D., Chairman Dia D. McCaughan, D.P.M. Christopher A. Seda, D.P.M., Vice Chairman

William D. Fetchik, D.O., Secretary

Professional and Occupational Affairs

BUREAU PERSONNEL:

Dean F. Picarella, Esquire, Board Counsel Thomas M. Davis, Esquire, Regulatory Counsel Paul J. Jarabeck, Esquire, Senior Board Prosecutor Timothy J. Henderson, Esquire, Board Prosecution Liaison Priscilla Turek, Board Administrator

Arion R. Claggett, Acting Commissioner, Bureau of

Andrew LaFratte, MPA, Deputy Policy Director, Department of State

Carlton Smith, Deputy Chief Counsel, Prosecution Division

Nichole Wray, Division Chief of the State Boards of Medicine, Osteopathic Medicine, and Podiatry Deena Parmelee, Legal Office Administrator 1, Department of State

Brian, Extern, Department of State Benjamin McFadden, Extern, Department of State

ALSO PRESENT:

Mike Barth, Executive Director, Pennsylvania Podiatric Medical Association Adam Jarabeck Derek Richmond

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2 State Board of Podiatry
3 February 28, 2024

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5 [Pursuant to Section 708(a)(5) of the Sunshine Act, 6 at 10:00 a.m. the Board entered into Executive 7 Session with Dean F. Picarella, Esquire, Senior Board 8 Counsel, for the purpose of conducting quasi-judicial 9 deliberations on a number of matters that are 10 currently pending before the Board and to receive the 11 advice of counsel. The Board returned to open 12 session at 10:30 a.m.]

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The regularly scheduled meeting of the State

Board of Podiatry was held on Wednesday, February 28,

2024. Eric B. Greenberg, D.P.M., J.D., Chairman,

called the meeting to order at 10:33 a.m.

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[Dean F. Picarella, Esquire, Board Counsel, noted the meeting was being recorded and voluntary participation constituted consent to be recorded.

Mr. Picarella also noted the Board entered into Executive Session for the purpose of conducting quasi-judicial deliberations on a number of matters that are currently pending before the Board and to

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   receive the advice of counsel.]
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   Introduction of Board Members/Attendees
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   [Priscilla Turek, Board Administrator, provided an
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   introduction of the Board members, staff, and
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   audience in attendance.
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   Approval of minutes of the December 20, 2023 meeting
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   CHAIRMAN GREENBERG:
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                 Next on the agenda is the approval of
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                 minutes from the previous meeting in
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                 December. Has everybody reviewed those
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                 minutes?
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                     Can I get a motion to approve the
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                 minutes as recorded?
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   ACTING COMMISSIONER CLAGGETT:
                 So moved.
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   CHAIRMAN GREENBERG:
                 Second?
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   DR. FETCHIK:
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                 Second.
   CHAIRMAN GREENBERG:
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                 May I have a roll call vote on that?
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                 Mr. Claggett, aye; Dr. Greenberg, aye;
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1 Dr. McCaughan, aye; Dr. Seda, aye; Dr. 2 Fetchik, aye. 3 [The motion carried unanimously.] 4 5 Appointment - Annual Prosecution Division 6 Presentation 7 [Carlton Smith, Esquire, Deputy Chief Counsel, Prosecution Division, informed Board members that he assumed his role in March 2023 when Carolyn 10 DeLaurentis was promoted to the Executive Deputy Chief Counsel position and provided a brief summary 11 12 of his professional background. 13 Mr. Smith reported a decrease in the number of 14 Bureau of Professional and Occupational Affairs 15 (BPOA) complaints across all boards and commissions from around 22,000 in 2022 to roughly 19,000 in 2023. 16 Mr. Smith presented the Prosecution Division's 17 18 Annual Report for the State Board of Podiatry. reported almost 1,500 licensees in 2023. He noted 73 19 20 cases were opened in 2023. He also noted 87 current 21 open cases and 65 closed cases. He informed Board 22 members that prosecution's standard is to be able to 23 dispose of a case within a year across all boards. 24 Mr. Smith addressed closed discipline cases in

2023, noting 4 suspensions, 3 voluntary surrenders,

1 and some fines.

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Mr. Smith addressed prosecution not warranted and warning letters. He reported 6 warning letters and explained that warning letters are issued after prosecution considered the seriousness of the allegations, licensee disciplinary history, and strength of the evidence.

Mr. Smith discussed prosecution not warranted, noting prosecution again considers the seriousness of the allegations and disciplinary history but also considers any type of expert opinion in terms of evaluating whether to forward with the case and assessing any possible violation.

Mr. Smith also reported the Board had one case dismissed in 2023.]

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17 Report of Prosecutors

18 [Timothy J. Henderson, Esquire, Board Prosecution

19 Liaison, presented the Consent Agreement for Case No.

20 21-44-017790. He referred to Section 16(a)(3) of the

21 Podiatry Practice Act and addressed the recommended

22 discipline, including undergoing a PROBE Ethics &

23 Boundaries Program.

Acting Commissioner Claggett asked Mr. Henderson to provide an overview of the PROBE Ethics &

Boundaries Program.

Mr. Henderson explained that the course is basically for professionals who breach boundaries with patients. He noted that the ethics course is a live three-day course of continuing education, where individuals are educated on boundaries in the workplace as well as other relevant instruction of how to present themselves in the workplace.

Mr. Henderson mentioned that the case is not common in the podiatry world, so there was not a lot of precedent set by the Board on this particular issue. He noted the civil penalty was addressed to provide justice for this matter and to correspond to similar acts that may have been committed by podiatrists.

Mr. Henderson noted that prior to November 2022 that the Commonwealth did present this case, and everything else is the same except for the addition of the 12 months of probation, which would likely be reported to the National Practitioner Data Bank.

Chairman Greenberg asked whether the 25 hours of education is also done for similar actions or violations within the medical and doctor of osteopathic medicine (D.O.) boards.

Mr. Henderson noted the education would be done

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   for similar actions or violations within the medical
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   and podiatric boards, and it is interactive and
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   instructional as well.]
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   [Pursuant to Section 708(a)(5) of the Sunshine Act,
   at 10:50 a.m. the Board entered into Executive
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   Session with Dean F. Picarella, Esquire, Board
   Counsel, for the purpose of conducting quasi-judicial
   deliberations on a number of matters that are
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   currently pending before the Board and to receive the
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   advice of counsel. The Board returned to open
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   session at 10:55 a.m.]
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   MR. PICARELLA:
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                Based upon discussions in Executive
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                Session, I believe the Board Chair would
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                entertain a motion to approve the Consent
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                Agreement at Case No. 21-44-017790.
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   CHAIRMAN GREENBERG:
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                Would somebody make the motion?
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   ACTING COMMISSIONER CLAGGETT:
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                So moved.
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   CHAIRMAN GREENBERG:
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                Second to the motion?
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DR. FETCHIK:

Second. 1 2 CHAIRMAN GREENBERG: 3 May I have a roll call vote? 4 5 Mr. Claggett, aye; Dr. Greenberg, aye; 6 Dr. McCaughan, aye; Dr. Seda, recuse; Dr. 7 Fetchik, aye. 8 [The motion carried. Christopher Seda recused 9 himself from deliberations and voting on the motion. 10 The Respondent's name is Youssef M. Kabbani, D.P.M.] * * * 11 12 Report of Prosecutors - (cont.) 13 [Paul J. Jarabeck, Esquire, Senior Board Prosecutor, 14 informed Board members that the Pennsylvania 15 Department of Health will be publishing a Health 16 Alert Network Advisory detailing infection prevention 17 and control practice expectations in podiatric care. 18 Mr. Jarabeck noted that the draft will be 19 released jointly by the Philadelphia Department of 20 Public Health and the Pennsylvania Department of

21 Health. He stated the Pennsylvania Department of 22 Health has received input from regulatory partners 23 for long-term care facilities and from the 24 Pennsylvania Podiatric Medical Association (PPMA), 25 noting PPMA has agreed to distribute the Health Alert Network Advisory by email to their members once it is published.

Mr. Jarabeck thanked Acting Commissioner Claggett and Board Counsel for their assent to being able to send an email blast to all Podiatry Board licensees of the Health Alert Network Advisory. He mentioned that the Department of State website will include a link but not till there is a publication blackout that has ended somewhere around March 25.

Mr. Jarabeck is hoping the advisory will be published by the end of this week or beginning of next week. He emphasized there is a strong partnership between their office and the Department of Health to work together on infection control investigations and to bring information to the public.

Dr. Fetchik requested information regarding what infections or diseases podiatrists would be required to report to agencies.

Mr. Jarabeck explained the need to be careful about delving into the area of the Department of Health, being an advisory entity that is working to stop a violation versus what they do in terms of investigating and potentially putting discipline forth.

Mr. Jarabeck explained that it is really the standard of process of sterilizing and disinfecting instruments and the facility itself versus any type of reporting of disease, which goes back to following the standard of care and infection control in treatment settings. He mentioned that their emphasis has been on the issue of long-term care facilities.

Acting Commissioner Claggett thanked Mr. Jarabeck for bringing it to the Board's attention.]

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Report of Board Counsel - Final Adjudication and
Order for Approval

13 MR. PICARELLA:

I have one item in my report. It's the Final Adjudication and Order drafted pursuant to the Board's direction at the last meeting. It's on <u>Timothy Abbott</u>, Case No. 22-44-013588.

Based upon discussions in Executive
Session, I believe the Board Chair would
entertain a motion to adopt the
Adjudication and Order in this matter and
direct Board Counsel to issue it as the
Final Order of the Board.

25 CHAIRMAN GREENBERG:

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                May I have a motion for that?
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   ACTING COMMISSIONER CLAGGETT:
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                So moved.
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   CHAIRMAN GREENBERG:
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                Second?
   DR. FETCHIK:
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                Second.
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   CHAIRMAN GREENBERG:
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                Roll call vote?
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                Mr. Claggett, aye; Dr. Greenberg, aye;
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                Dr. McCaughan, aye; Dr. Seda, aye; Dr.
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                Fetchik, aye.
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   [The motion carried unanimously.]
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   Report of Board Counsel - Regulatory Status Report
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   [Thomas M. Davis, Esquire, Regulatory Counsel,
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   provided a Status of Regulations Report for the
   Board's review. He informed Board members of the
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   active regulations and provided an update on three
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   regulations that were moving forward. He mentioned
   that two of the regulations were drafted by Deputy
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   Chief Counsel Montgomery, who probably presented
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   before the Board several times regarding the Act 53
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   and child abuse regulations.
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Mr. Davis stated the Board received a letter from the Independent Regulatory Review Commission on February 1, which read, the Independent Regulatory Review Commission has reviewed your proposed regulation. We have no objections, comments, or recommendations to offer on this regulation. If you deliver the final-form regulation without revisions and the committees do not take any action, it will be deemed approved.

- Mr. Davis noted it is practically the same regulation bureau-wide and is available on IRRC's website under 16A-4412.
 - Mr. Davis addressed 16A-66, noting it is a bureau or commissioner's regulation regarding Act 53 and criminal offenses related directly to the practice of this profession. He reported it to be a consolidation of all the board lists, and it is also available on IRRC's website.
 - Mr. Davis referred to bullet points provided by
 Deputy Chief Counsel Montgomery, where the final-form
 rulemaking was delivered to IRRC and the standing
 committees of the House and Senate on February 14,
 2024. He noted everyone who commented was notified
 of the delivery and the availability of the finalform rulemaking. He informed Board member that it is

posted on IRRC's website and is expected to be on IRRC's agenda for its public meeting on March 21, 2024. He noted there will be a public meeting before the Independent Regulatory Review Commission, and

5 anybody can attend.

Mr. Davis also provided an update on the radiologic procedures regulation, noting it is extremely close to completion. He mentioned the Board already voted to approve the annex and the preamble, and he is working on the regulatory package. He discussed the Regulatory Analysis Form (RAF) and a question about what the Board wanted to do in comparison to the 13 other states in the Northeast quadrant.]

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[Andrew LaFratte, MPA, Deputy Policy Director,
Department of State, addressed the Board's prior
request, noting two letters of support he received
from Chairman Greenberg were very helpful in
understanding the challenges.

Mr. LaFratte also mentioned receiving a letter from Dr. Pontious, where one of the main pain points was the inability of a podiatrist to directly order home health care, including wound care, after performing foot and ankle surgery. He noted Dr.

Pontious suggested that the Certified Registered

Nurse Practitioner (CRNP) statute Title 41, § 21.27(a)

limits a CRNP to "collaborate only with physicians

who practice in this Commonwealth."

Mr. LaFratte explained that the request from Dr. Pontious and Chairman Greensberg was to modify the regulation to then read, "collaborate only with physicians and podiatrists in this Commonwealth,", and collaboration would be limited to the present scope of podiatric medicine.

Mr. LaFratte mentioned receiving a second letter from Dr. Paris with the main pain point being that the lack of recognition for podiatrists as physicians has resulted in allied health professionals refusing to accept a podiatrist's orders and then directing that to recommendations from the PA Chapter of the American Physical Therapy Association as a rationale.

Mr. LaFratte informed Board members that their office has been in communication with the Department of Human Services regarding Medicaid requirements for podiatry services and provided a brief summary of the findings. He stated the Centers for Medicare and Medicaid Services (CMS), which exercises federal oversight authority for the Medicaid program, name the services that state Medicaid programs are

required to provide under Chapter 42 of the Code of Federal Regulations.

Mr. LaFratte referred to § 440, where podiatry is an optional service that Pennsylvania has elected to provide and the Medical Assistance Program in some instances. He noted payment conditions for podiatric services in the Medical assistance Program are found in Title 55 of the PA Code in § 1143, which pertains to podiatry services.

Mr. LaFratte stated the regulation details podiatry services and has a list of non-compensable services and items under § 1143.58 specifically stating that payment is not made to a podiatrist for these items and then lists 13 different items. He noted item 11 on the list is physical therapy and may be why the PA Chapter of the Physical Therapy Association recommends that physical therapists not accept orders from podiatrists when it comes to Medicaid, which was highlighted in the letter from Dr. Paris.

Mr. LaFratte stated the Medical Assistance

Program Outpatient Fee Schedule can be searched to

determine if a specific procedural code is covered in

the fee for service delivery system. He noted that

podiatrists are labeled as provider type 14 with

specialty 140 and can bill for those services. He mentioned that exactly 4,376 entries are open to podiatrists when looking at the Medical Assistance Fee Schedule.

Chairman Greenberg expressed concern with the word optional being used compared to the other medical professions or the allopathic and osteopathic providers and asked why podiatry is not included as a mandatory service.

Mr. LaFratte mentioned having conversations with The Department of Human Services (DHS). He noted it is a federal issue and is an elected service, where Pennsylvania has elected to cover that. He explained that a covered service is defined in the MA Program and pertains to a benefit to which an MA beneficiary is entitled under the program of the Commonwealth.

Mr. LaFratte stated DHS was asked what a podiatrist or a practitioner can do if a service is not covered and were told that in the fee for service delivery system, if an MA provider believes that an item or service not listed on the program fee schedule is medically necessary for the MA beneficiary, the provider may submit a request for coverage of that item or service through DHS's Administrative Waiver Program. He mentioned that

there is an exception process, and the procedure is described in the Medical Assistance program provider handbook.

Mr. LaFratte explained that DHS reviews the administrative waivers and then make a medical necessity determination based on the submitted documentation and will notify the prescriber or provider and the beneficiary of that decision.

Mr. LaFratte informed Board members that the Department of State (DOS) policy is available to facilitate the conversation with the State Board of Nursing if the Board expresses interest in pursuing the regulatory change concerning the CRNP statute.

Mr. LaFratte also stated DOS policy is continuing this conversation with the Department of Human Services regarding the non-compensable list that has physical therapy on there for podiatry services. He noted waiting for answers on what, if any, mechanisms exist for making alterations to the contents of that list.

Mr. LaFratte also mentioned looking into the Department of Human Services Code for Pennsylvania at Title 55 of that Human Services Code under § 5230.3, where there is a possibility of including podiatrists in the definition of a licensed practitioner of the

healing arts. He noted the definition of a licensed practitioner of the healing arts under the Human Services Code reads that it is an individual licensed by the Commonwealth to practice the healing arts, and term is limited to a physician, physician assistant, a certified registered nurse practitioner, and psychologist.

Mr. LaFratte referred to the federal regulations under Home Health Services at § 440.70 for the federal Medicaid Program, where it states that home health services means the services of the section that are provided to a beneficiary on his or her physician's orders or orders written by a licensed practitioner of the healing arts acting within their scope of practice authorized under state law and as part of a written plan of care that the ordering practitioner reviews every 60 days for services.

Mr. LaFratte informed Board members that he is still talking with DHS to see whether podiatry could be added to the definition of a licensed practitioner of the healing arts, which could alleviate some of the concerns brought by the Board.

Chairman Greenberg encouraged Mr. LaFratte to pursue that and commented that the CRNP and the human service avenues seem to be a path to clear up the

Board's concerns.

Dr. McCaughan asked what kind of time frame a podiatrist would be looking at when applying for the waiver through DHS because patient care may be affected due to delays, along with putting additional administrative burdens on private practices.

Chairman Greenberg commented that the Board would prefer podiatrists not have to go through that avenue and delay when treating a patient and is asking for the same authority as other healthcare practitioners who do not have to make their patients wait.

Mr. LaFratte offered to ask DHS and forward their response to Board Counsel.

Chairman Greenberg stated the Board agreed with the CRNP and the Human Services options.

Mr. LaFratte will follow up with Board Counsel and Board administrator and go that route with the State Board of Nursing and continue to do their part speaking with the PA Department of Health and federal human services to investigate possibilities on a state level.

Chairman Greenberg thanked Mr. LaFratte for the quick response and follow up regarding the proposals.

Mr. LaFratte mentioned the Board Counsel had suggested the Board consider amending their own

Podiatry Practice Act in the past to define the term of a podiatric physician and asked whether that is also something the Board would like to do.

Chairman Greenberg stated the Board would like the profession of podiatry to be recognized as a physician practicing within their scope of practice as laid out per the statute. He noted their entire impetus was trying to go through it that way but that it seemed to meet lot of hurdles. He reported on never receiving a response from other stakeholders to let the Board know of objections that could be remedied.

Mr. LaFratte suggested the Board put a proposal together defining podiatric physician within their own Podiatry Practice Act.

Mr. Davis informed Board members that it may not be something the Board can do if it was already looked into in the past.

Chairman Greenberg explained that the Board never received a reason as to why it was not accepted in the past, and the Board is currently asking for the courtesy of a response as to why it is being rejected, so the Board can then give a response. He stated the Board would like to know who objected to it and their reason as to why it was not accepted.

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Chairman Greenberg emphasized that the word physician means physician within the scope of practice that has been on the books for many decades now, and there is no intention to expand their scope of practice by including the word physician as part of their definition.

Mr. Picarella stated there would need to be changes to the Practice Act that would go through the legislature, not to their regulations.

Chairman Greenberg commented that Mr. LaFratte is working on certain statutes for the CRNPs and human services, and the Board could have another prong through the legislature. He again mentioned the importance of receiving a response and an answer as to what is stalling it or to any objections being made.

Mr. Davis offered to work with Mr. Picarella and Mr. LaFratte to get the Board some kind of a response.]

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21 Report of Board Chair - No Report

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23 Report of Acting Commissioner - No Report

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25 Report of Board Administrator - No Report

23 [Priscilla Turek, Board Administrator, thanked Dr. 1 2 McCaughan for her service to the State Board of 3 Podiatry.] * * * 4 5 Continuing Education Program Approval 6 CHAIRMAN GREENBERG: 7 Continuing Education Program Approval for 8 Jefferson Northeast Health Podiatry Grand 9 Rounds for April 18. 10 Do I have a motion to ratify the position of the Continuing Education 11 Committee? 12 13 ACTING COMMISSIONER CLAGGETT: 14 So moved. 15 CHAIRMAN GREENBERG: 16 Second? DR. FETCHIK: 17 18 Second. 19 CHAIRMAN GREENBERG: 20 Roll call vote. 21 22 Mr. Claggett, aye; Dr. Greenberg, aye; 23 Dr. McCaughan, aye; Dr. Seda, aye; Dr. 24 Fetchik, aye.

[The motion carried unanimously.]

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   For the Board's Information/Discussion - Board
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     Meeting Dates
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   [Eric B. Greenberg, D.P.M., J.D., Chairman, noted the
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   2024 Board meeting dates are April 17, June 20,
   August 21, October 15, and December 16. He also
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   noted 2025 meeting dates for the Board's review.]
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   Adjournment
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   CHAIRMAN GREENBERG:
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                 Motion to adjourn.
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   ACTING COMMISSIONER CLAGGETT:
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                 So moved.
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   [There being no further business, the State Board of
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   Podiatry Meeting adjourned at 11:28 a.m.]
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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Podiatry meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Podiatry meeting.

Derek Richmond,

Minute Clerk

Sargent's Court Reporting Service, Inc.