



Arizona Medical Board

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FINAL MINUTES FOR REGULAR SESSION MEETING

Held on Tuesday, February 13, 2018

And on Wednesday, February 14, 2018

1740 W. Adams, Board Room A • Phoenix, Arizona

Board Members

James M. Gillard, M.D., M.S., F.A.C.E.P., F.A.A.E.M., Chair

R. Screven Farmer, M.D., Vice-Chair

Jodi A. Bain, Esq., Secretary

Bruce A. Bethancourt, M.D., F.A.C.P.

Teresa L. Connolly, D.N.P., R.N., N.E.A.-B.C.

Gary R. Figge, M.D.

Pamela E. Jones

Lois E. Krahn, M.D.

Edward G. Paul, M.D.

Wanda J. Salter, R.N.

Tuesday, February 13, 2018

GENERAL BUSINESS

A. CALL TO ORDER

Dr. Gillard called the meeting to order at 8:08 a.m.

B. ROLL CALL

The following Board members were present: Dr. Gillard, Ms. Bain, Dr. Farmer, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Krahn, Dr. Paul and Ms. Salter.

ALSO PRESENT

Present among Board staff include: Carrie Smith, AAG; Anne Froedge, AAG; Marc Harris, AAG; Patricia E. McSorley, Executive Director; Kristina Fredericksen, Deputy Director; William Wolf, M.D., Chief Medical Consultant; Andrea Cisneros, Staff Investigational Review Committee ("SIRC") Coordinator; Raquel Rivera, Investigations Manager; Mary Bober, Board Operations Manager; and Michelle Robles, Board Coordinator.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

Individuals who addressed the Board during the Public Statements portion of the meeting appear beneath the matter(s) referenced.

D. EXECUTIVE DIRECTOR'S REPORT

- Discussion Regarding Relocation to 1740 W. Adams St. building
Ms. McSorley reported that improvements have been made to the audio sound in the Board room.
- Update Regarding Physician Health Program ("PHP") and Procurement Contract Award
Ms. McSorley reported that Gateway Institute and Greenberg & Sucher, PC were awarded contracts by the State Procurement. Ms. McSorley reported that the goal is to have consistency between the two contractors and stated that there will be a meeting with both providers to establish program requirements.

- Update and Possible Action Regarding Pending Legislation, Including but not limited to:
 - HB2001 Arizona Opioid Epidemic Act
Ms. McSorley reported that the act has passed and there will be changes to prescribing practices.

Dr. Farmer expressed concern that even with all the publicity there is still a substantial number of providers who are unaware of the new requirements. The Board is tasked with enforcing and educating physicians and Dr. Farmer suggested a formal notice from the Board on the matter be sent to all licensees. Board members agreed that the notice should be sent via email.

Ms. Smith recommended the JLRC committee meet to discuss whether to change the Board's new rule effective March 10th requiring physicians to obtain one hour of continuing medical education ("CME") regarding opioids every renewal cycle.

- SB1031 Health Professionals; Penalties: Prohibition
Ms. McSorley reported that the bill prohibits a Board from disciplining a physician if the patient declines treatment. The bill has not progressed at this time.
 - SB1184 State Compact; Temporary Professional Licenses
Ms. McSorley reported that there may be an amendment to the bill for removal of the DO and MD Boards since these boards already offer a temporary license.
- Nursing Board's Request for Board Comment Regarding Medical Esthetics Procedures Performed by Licensed Nurses

Ms. McSorley reported that the Nursing Board has requested the Board's commentary on the proposed advisory opinion.

Dr. Farmer commented that it is not within the Boards purview to review the proposed opinion.

- Federation of State Medical Boards 2018 Annual Meeting

Ms. McSorley reported the meeting will take place April 26-28, 2018 in North Carolina.

- Update on Board Member Vacancies

Ms. McSorley reported that she has met with Emily Rajakovich, Director of Boards and Commissions, and she is aware that the Board requires two new members and the geographical requirements of the statute.

E. CHAIR'S REPORT

Dr. Gillard commented that a public member of the Board may attend FSMB. The Board thanked the medical students in attendance.

F. LEGAL ADVISOR'S REPORT

- Legislative Advice Memorandum – HB2001 Opioid Epidemic Act

Ms. Smith noted that the Opioid Epidemic Act is effective April 26, 2018 and contains numerous statutory changes that effect both health care practitioners and regulatory agencies.

G. DISCUSSION AND POSSIBLE ACTION REGARDING ELECTION OF OFFICERS

MOTION: Dr. Figge moved for election of Board Officers Nominations for Board elections: Dr. Gillard, Chairman; Dr. Farmer, Vice Chairman; and Ms. Bain, Secretary.

SECOND: Ms. Jones.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

H. APPROVAL OF MINUTES

MOTION: Dr. Figge moved to approve the minutes for the November 2, 2017 Special Teleconference; including Executive Session and the December 6, 2017 Regular Session; including Executive Session.

SECOND: Dr. Bethancourt.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

LEGAL MATTERS

I. FORMAL INTERVIEWS

1. MD-16-0589A, JOHN J. SEARS, M.D., LIC. #27392

Dr. Sears was present with Counsel Scott Hergenroether, Esq. D.P. addressed the Board during the Public Statements portion of the meeting.

Board staff summarized that the Board initiated the case after receiving a complaint regarding Dr. Sears' care and treatment of patient CP alleging inappropriate prescribing and failure to properly treat the patient. The medical consultant ("MC") observed that long-term opiate pain medications were begun for this patient without an adequate patient assessment and continued without adequate monitoring of the patient's condition. Charts were pulled for patients JH, JD, and RB, which were forwarded to a new MC for quality of care review. The second MC found deviations from the standard of care in all three cases.

Mr. Hergenroether stated that Dr. Sears prescribing of pain medications for these the four patients are within the standard of care. Mr. Hergenroether summarized Dr. Sears' care and prescribing practices for the four patients in this case and noted that the Controlled Substance Prescription Monitoring Program ("CSPMP") confirmed that there were no early refills prescribed for any of the four patients. Mr. Hergenroether commented that due to health insurance and a lack of accessibility in a rural area it is difficult for these patients to see a pain management specialist.

During questioning, Dr. Sears explained that all his prescriptions are done electronically and that years ago patients were required to pick up their prescriptions. Dr. Sears addressed the concern that physician exams were not done when prescription refills were given and stated that he continues to work towards improving his documentation to ensure medical records are adequate. Dr. Sears explained his justification and thought process for establishing opioid dosages and that he has taken additional training regarding opioids and the current standard of care. Dr. Sears explained the changes he has made to his pain management agreements since completing Board approved intensive in-person CME for controlled substance prescribing.

In closing, Dr. Sears stated that he continues to be proactive regarding urine drug screenings, querying the CSPMP and attempting to decreasing opioid dosages. Mr. Hergenroether requested that the Board not issue a disciplinary action in this case.

During deliberation, Dr. Krahn expressed concern regarding the high doses of medications used and that the physician has a responsibility to ensure his medical records are adequate.

MOTION: Dr. Krahn moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) and (q) for reasons as stated by SIRC.

SECOND: Dr. Paul.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

MOTION: Dr. Krahn moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and One Year Probation. Within thirty days of the

effective date of this Order, Dr. Sears shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews, at his expense. After two consecutive favorable chart reviews, Dr. Sears may petition the Board to request probation termination.

SECOND: Dr. Figge.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Ms. Bain, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Krahn, Dr. Paul and Ms. Salter.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

2. MD-17-0696A, STEVEN A. WOOL, M.D., LIC. #12805
Dr. Wool was present with Counsel Peter Akmajian, Esq.

Board staff summarized that on July 21, 2017, the Board initiated this case after receiving notification from the Arizona Department of Health Services ("DHS") indicating that Dr. Wool may not have completed the appropriate requirements to certify qualifying patients for the medical marijuana program.

In opening, Mr. Akmajian stated that Dr. Wool misunderstood the requirements of querying the CSPMP and has since changed his practice. Mr. Akmajian opined that the statute cited in this case regarding knowingly making a fraudulent statement to the Board is not appropriate and that this case does not require a disciplinary action. Dr. Wool apologized for the misunderstanding in this case and confirmed that he now queries the CSPMP.

During questioning, Dr. Wool explained that there is very little training available on medical marijuana however he is working towards being a part of the solution. Dr. Wool explained his rationale for prescribing medical marijuana to his patients and the physician's responsibility to educate the patient. Dr. Wool noted that he has since begun using a scribe to ensure his medical records are adequate. In closing, Dr. Wool stated that there was no intent to mislead the Board, community or his patients.

During deliberation, Dr. Paul commented that whether in error or not, Dr. Wool signed a document without querying the CSPMP.

MOTION: Dr. Paul moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(t) for reasons as stated by SIRC

SECOND: Dr. Figge.

VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

Dr. Paul opined that due to considerable mitigating factors this case does not rise to a level of discipline.

MOTION: Dr. Paul moved to Issue an Advisory Letter for attesting to have queried the CSPMP database for patients receiving medical marijuana certifications when he did not. While the licensee has demonstrated substantial compliance through remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

SECOND: Ms. Bain.

Dr. Figge commented that ignorance of the law is not an excuse however; there was no intent to mislead the Board. Dr. Farmer noted that the physician is attempting to be a part of the solution.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

J. FORMAL INTERVIEWS

1. THIS ITEM HAS BEEN MOVED TO ITEM N NUMBER 4.
2. MD-16-1495A, MOHAMED H. EL-GASIM, M.D., LIC. #36344

Dr. El-Gasim was present with Counsel Stephen Yost, Esq.

Board staff summarized that the Board initiated the case after receiving notification of a malpractice settlement regarding Dr. El-Gasim's care and treatment of NH, a 2 month-old male patient, alleging failure to send the patient to the emergency room given a temperature of 101.7, which led to a delay in diagnosis, infection and death. The MC stated that the patient's care fell well below the standard of care, failed to consider sepsis and that Dr. El-Gasim prescribed inappropriate antibiotics and prescribed steroids as well, which the MC stated is "totally wrong" in this setting.

In opening, Dr. El-Gasim summarized his care and the rationale behind his treatment of NH based on the patient's symptomology. Dr. El-Gasim stated that he had no awareness of when the patient had returned to his office.

Mr. Yost informed the Board that another physician was on staff at the pediatric urgent care the night of the patient's return visit but they stated they did not see her or Dr. El-Gasim. Mr. Yost quoted literature that full sepsis work up in an infant 60 days or older with a fever is only done in 5 percent of cases and noted that the patient did not appear septic. Mr. Yost commented that there were missed opportunities on the family's part in that they did not go to emergency room as instructed by Dr. El-Gasim in the event of a temperature spike. Mr. Yost informed the Board that the pediatric urgent care no longer completes sepsis work up and if the temperature is high the patient is referred to the emergency room.

During questioning, Dr. El-Gasim explained his reasoning behind his decision to prescribe steroids and antibiotics to treat infant pneumonia. Dr. El-Gasim stated that he completed an evaluation and that he did obtain a urine screening despite a lack of documentation.

During deliberation, Dr. Figge opined that there is evidence of a medical record violation and a quality of care violation as there was a missed opportunity to treat sepsis.

MOTION: Dr. Figge moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) and (q) for reasons as stated by SIRC.

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Figge opined that this was a missed opportunity and the case should have been taken more seriously.

MOTION: Dr. Figge moved for a Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

SECOND: Ms. Salter.

Dr. Gillard commented that this is a difficult case and that a temperature of 101.7 in a two month infant is not unheard of with a viral infection. Board members agreed that the missed opportunity was when the family returned for a second visit but the physician was not notified. Dr. Figge expressed concern regarding the physician's decision making. Dr. Farmer noted that another missed opportunity was the missed tachycardia which is a sign of sepsis. Board members agreed that the documentation was inadequate.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Ms. Bain, Dr. Bethancourt, Dr.

Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter. The following Board member was absent: Dr. Krahn.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

3. THIS ITEM HAS BEEN MOVED TO ITEM N NUMBER 5.

CONSENT AGENDA

K. CASES RECOMMENDED FOR ADVISORY LETTERS

MOTION: Dr. Farmer moved to issue an Advisory Letter in item numbers 1, 2, 4, 5, 7-9, 12, and 15.

SECOND: Dr. Bethancourt.

VOTE: 10-yay, 0-nay, 0-abstain, 0 (1in item #1 and #5) -recuse, 0-absent.

MOTION PASSED.

1. MD-16-1301A, EDWARD W. SONG, M.D., LIC. #33859
Dr. Krahn recused herself from this case.

RESOLUTION: Issue an Advisory Letter for failure to maintain medical records. While the licensee has demonstrated substantial compliance through remediation that has mitigated the need for disciplinary action, the Board believes that repetition of the activities that led to the investigation may result in further Board action against the licensee.

2. MD-16-0785A, ROY I. DAVIS, M.D., LIC. #10461

RESOLUTION: Issue an Advisory Letter for failing to use the "SEE-FIM" procedure in a patient with a BRCA mutation when a prophylactic bilateral salpingo-oophorectomy was carried out. There is insufficient evidence to support discipline.

3. MD-17-0633A, JOHN P. DAGIRMANJIAN, M.D., LIC. #27974

Dr. Farmer summarized that the case involved an anesthesiologist who provided care at an outpatient center where there was a business dispute and the physician's group terminated their contract with the center. A complaint of patient abandonment was made. The physician continued to treat the patient since he had already established a doctor/patient relationship. Dr. Farmer noted the MC's finding of no deviation and opined that the physician provided good care and signed over patient care once it was deemed that the patient was fully recovered.

MOTION: Dr. Farmer moved to dismiss.

SECOND: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

4. MD-17-0054A, JOSEPH A. ORZEL, M.D., LIC. #19258

RESOLUTION: Issue an Advisory Letter for failure to diagnose a lesion on a barium enema. There is insufficient evidence to support disciplinary action.

5. MD-17-0713A, DANIEL P. MC CABE, M.D., LIC. #27455

Dr. Farmer recused himself from this case.

RESOLUTION: Issue an Advisory Letter for failing to resect the esophagus to the level of the azygous vein during exploratory surgery for a patient experiencing complications from esophageal cancer treatment and for delay in recognizing an esophageal leak during the post-operative care period. There is insufficient evidence to support discipline.

6. MD-17-0681A, KURT R. MAYBERRY, M.D., LIC. #49016

Dr. Bethancourt summarized that the patient arrived at the emergency room with abdominal pain and the physician did not complete a pelvic exam. Dr. Bethancourt opined that all appropriate tests were completed.

MOTION: Dr. Bethancourt moved to dismiss.

SECOND: Dr. Farmer.

Dr. Gillard commented that a pelvic exam was not necessary as the imaging tests were already completed. Dr. Figge noted literature that recommends against completing a pelvic exam in this situation.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

7. MD-17-0521A, JAMES G. RULA, M.D., LIC. #19122

RESOLUTION: Issue an Advisory Letter for failing to obtain a specimen radiograph after performing a recommended excisional breast biopsy following a core needle biopsy. There is insufficient evidence to support disciplinary action.

8. MD-16-1047A, GILMAN T. WOLSEY, M.D., LIC. #41795

RESOLUTION: Issue an Advisory Letter for failing to detect or record detection of a 1.5 cm pulmonary nodule when interpreting a chest x-ray. There is insufficient evidence to support disciplinary action.

9. MD-17-0693A, HAROLYN C. GILES, M.D., LIC. #11732

RESOLUTION: Issue an Advisory Letter for falsely attesting to having completed queries of the CSPMP database for 59 patients that were issued medical marijuana certifications. While the licensee has demonstrated substantial compliance through remediation that has mitigated the need for disciplinary action, the Board believes that repetition of the activities that led to the investigation may result in further Board action against the licensee.

10. MD-17-0186A, TRISTAN C. PICO, M.D., LIC. #42864

Dr. Pico addressed the Board during the Public Statements portion of the meeting.

Ms. Bain noted the physician's public statement citing an administration issue as opposed to a medical records issue. Dr. Gillard noted that there were no medical care issues and that the physician has since taken CME in medical records.

MOTION: Dr. Figge moved to dismiss.

SECOND: Dr. Bethancourt.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

11. MD-17-0622A, RAWINSON C. D. FERNANDO, M.D., LIC. #17475

Counsel Gary Fadell, Esq. addressed the Board during the Public Statements portion of the meeting.

Ms. Bain noted the uniqueness of this case and difficulty determining whether or not there was abandonment of care. Dr. Krahn commented that this was a difficult situation and that there was a disagreement between the patient's desire for treatment and the physician's diagnosis.

MOTION: Dr. Paul moved to dismiss.

SECOND: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

12. MD-17-0558A, MICHAEL GOLDMAN, M.D., LIC. #30642

RESOLUTION: Issue an Advisory Letter for inappropriate prescribing and failure to maintain adequate medical records. There is insufficient evidence to support disciplinary action.

13. MD-17-0988A, J. MICHAEL CARUSO, M.D., LIC. #51112

Dr. Gillard summarized that due to a clerical error an email was sent to all patients of the practice stating that the practice was being closed. There was a concern regarding privileged information being disclosed. Board members opined that the physician was not responsible for a system issue. Dr. Krahn commented that there are expectations that protected health information be respected but opined this was an error.

MOTION: Dr. Bethancourt moved to dismiss.

SECOND: Dr. Farmer.

VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

14. MD-17-0617A, PETER J. CAMPBELL, M.D., LIC. #24254

C.B. addressed the Board during the Public Statements portion of the meeting.

Dr. Gillard summarized that the recommended advisory letter is for inadequate medical records however questioned whether or not there was a quality of care concern for not obtaining an infectious disease consult. Dr. Figge expressed a concern for a breach of confidentiality by the physician sharing the investigative file.

MOTION: Dr. Figge moved to return the case for further investigation to have SIRC consider whether there is a violation of A.R.S. § 32-1401(27)(q) regarding a potential deviation from the standard of care with failure to obtain an infectious disease consult, in addition to the finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e), and to consider whether the Board's confidentiality statute was also violated.

SECOND: Dr. Farmer.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

15. MD-17-0940A, MANISH J. PATEL, M.D., LIC. #29685

RESOLUTION: Issue an Advisory Letter for action taken by the State of Wyoming. The violation is a minor or technical violation that is not of sufficient merit to warrant discipline.

16. MD-16-0733A, GLENN C. HUNTER, M.D., LIC. #17199

Dr. Farmer commented that whether or not the physician is currently practicing is not relevant as it does not affect the care provided at the time of these cases.

Board staff explained that the MC reviewed four cases provided by the VA as opposed to all cases provided. Board staff opined that although there was a second physician involved the primary surgeon is responsible for the procedure.

Board members found it aggravating that the physician blamed the co-surgeons and administrators for the deviations and has taken no responsibility himself. Board members opined additional MC review may be required to determine whether this case rises to the level of discipline.

MOTION: Dr. Farmer moved to return the case for further investigation to request that SIRC reconsider the recommendation for a non-disciplinary resolution and to consider whether a second MC review is warranted.

SECOND: Ms. Jones.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

L. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDERS

MOTION: Dr. Krahn moved to issue an Advisory Letter and Order for Non-Disciplinary CME in item numbers 1 and 2.

SECOND: Dr. Bethancourt.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. MD-17-0473A, TODD W. TURLEY, M.D., LIC. #34623

RESOLUTION: Issue an Advisory Letter and Order for Non-Disciplinary CME for delay in providing care after the patient reported possible complications following a procedure, and for inadequate medical records. There is insufficient evidence to support disciplinary action. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.

2. MD-17-0751A, RICHARD M. ERNST, M.D., LIC. #30818

Dr. Ernst addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Issue an Advisory Letter and Order for Non-Disciplinary CME for failing to consider key laboratory results, document diabetic teaching, or arrange appropriate follow up of a patient with new onset diabetes mellitus with ketoacidosis; and for inadequate medical records. There is insufficient evidence to support disciplinary action. Within six months, obtain no less than 5 hours of Board staff pre-approved Category I CME in the evaluation and treatment of DKA. The CME hours shall be in addition to the hours required for license renewal.

3. MD-17-0533A, THOMAS J. BUDDENSICK M.D., LIC. #52652

Dr. Buddensick and complainant B. R. addressed the Board during the Public Statements portion of the meeting.

Dr. Farmer noted the MC's comment that this physician's care may have not fallen below the standard of care.

Board staff noted that the MC's argument is that in a greater body mass index ("BMI") patient, the procedure may be appropriate and opined that choosing another procedure in this emergent situation may not have affected the outcome.

Dr. Farmer opined that although the technique used is not the preferred technique, the physician did provide reasonable rationale for choosing the procedure in an emergent situation. Board members discussed that in an emergent situation a physician has to make a decision and noted that it was a lifesaving operation.

MOTION: Dr. Farmer moved to dismiss.

SECOND: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

4. MD-17-0344A, ROBERT A. MILESKE, M.D., LIC. #24451

Ms. Jones noted the physician's failure to obtain consent for a surgical procedure and inadequate medical records. Ms. Jones questioned whether CME on medical recordkeeping is needed in addition to the recommendation for CME in diagnosis and treatment of anterior compartment syndrome.

Board staff clarified that the physician had a discussion with the patient regarding the treatment plan during which the patient stated that she did not want the procedure. Dr. Mileski performed the procedure anyway and the patient experienced anterior compartment syndrome. Dr. Farmer noted the physician had good intent and no prior board history but he did not obtain appropriate informed consent. Dr. Connolly opined that it is concerning that he went against the patient's wishes.

MOTION: Dr. Farmer moved to issue an Advisory Letter and Order for Non-Disciplinary CME for failure to obtain consent for a surgical procedure and for inadequate medical records. There is insufficient evidence to support disciplinary

action. Within six months, complete no less than 5 hours of Board staff pre-approved Category I CME in the diagnosis and treatment of anterior compartment syndrome; and, no less than 3 hours of Board staff pre-approved Category I CME in informed consent and/or medical ethics. The CME hours shall be in addition to the hours required for license renewal.

SECOND: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

M. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

MOTION: Dr. Farmer moved to uphold the Executive Director's dismissal in item numbers 1-4, 6-8 and 10-11.

SECOND: Dr. Bethancourt.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

1. MD-17-0517C, ERUM JADOON, M.D., LIC. #44239

RESOLUTION: Dismissal upheld.

2. MD-17-0185A, RIMMA FINKEL, M.D., LIC. #35288

RESOLUTION: Dismissal upheld.

3. MD-17-0405A, JORDAN R. OLAND, M.D., LIC. #33069

RESOLUTION: Dismissal upheld.

4. MD-17-0518A, JOEL T. FUNK, M.D., LIC. #36574

RESOLUTION: Dismissal upheld.

5. MD-17-0683A, SHEETAL A. KALE, M.D., LIC. #37021

B.H. and K.H. addressed the Board during the Public Statements portion of the meeting.

Board staff summarized that there was a delay of two and a half weeks in discovering the injury. However, the description in the post-operative note does not match what was written in the emergency room note which is why there may have been a delay in the discovery.

MOTION: Dr. Farmer moved to uphold the Executive Director's dismissal.

SECOND: Dr. Paul.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

6. MD-17-0839A, JEFFREY P. EDELSTEIN, M.D., LIC. #15100

Counsel Scott King, Esq. addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Dismissal upheld.

7. MD-16-1399A, KIRK D. MINKUS, M.D., LIC. #33081

Dr. Minkus addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Dismissal upheld.

8. MD-17-0552A, EMESE KALNOKI-KIS, M.D., LIC. #43581

K.F. addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Dismissal upheld.

9. MD-17-0264A, ROBERT D. JONES, M.D., LIC. #29835

Dr. Jones, Counsel Robyn Burgess, Esq. and complainant S.R. addressed the Board during the Public Statements portion of the meeting.

Ms. Bain commented that properly certified personnel were not present to complete the x-ray even if the physician ordered it and opined this was an administration error. Dr. Gillard commented that the use of a metal detector was quite expedient and that the x-ray is just to confirm the items were in the stomach. Board members agreed that the protocol is to monitor the patient until the batteries pass, which staff did.

MOTION: Ms. Bain moved to uphold the Executive Director's dismissal.

SECOND: Dr. Bethancourt.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

10. MD-16-1339A, PAUL G. GAITAN, M.D., LIC. #32717

G. D. addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Dismissal upheld.

11. MD-17-0723A, AJAY SANAN, M.D., LIC. #27491

Dr. Figge stated that he knows the physician but it would not affect his ability to adjudicate the case.

RESOLUTION: Dismissal upheld.

N. PROPOSED CONSENT AGREEMENTS (Disciplinary)

MOTION: Dr. Farmer moved to accept the proposed Consent Agreement in item numbers 1-5.

SECOND: Ms. Jones.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Ms. Bain, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter. The following Board member was absent: Dr. Krahn.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

1. MD-17-0857A, PAUL M. BOLGER, M.D., LIC. #50030

RESOLUTION: Accept the proposed Consent Agreement for Decree of Censure and Five Year Probation with Practice Restriction and Civil Penalty. Within 90 days, Dr. Bolger shall pay a Civil Penalty in the amount of \$2,000. Dr. Bolger shall be prohibited from practicing telemedicine in the State of Arizona for the duration of Probation. Once the licensee has complied with the terms and conditions of Probation, he may petition the Board to request termination.

2. MD-16-0876A, WAYNE F. YAKES, M.D., LIC. #23960

RESOLUTION: Accept the proposed Consent Agreement for Probation to comply with the Colorado Board's Order. Dr. Yakes' shall cause the Colorado Board to provide quarterly reports to the Board regarding Respondent's compliance with the Colorado Order. Once the licensee has complied with the Probation, he must affirmatively petition the Board to request Probation termination. The request must be accompanied by proof that the Colorado Board's Order has been satisfied and terminated.

3. MD-16-1072A, LUIS S. TAN, M.D., LIC. #3848

RESOLUTION: Accept the proposed Consent Agreement for Surrender of License.

4. MD-16-0597A, PANAYIOTIS A. ELLINAS, M.D., LIC. #23114

RESOLUTION: Accept the proposed Consent Agreement for a Letter of Reprimand and Five Year Probation with Practice Restriction. Dr. Ellinas shall be prohibited from prescribing controlled substances until such time that he has entered into a contract with a Board approved Monitoring Company. The Monitoring Company shall perform periodic chart reviews. The physician shall be responsible for all costs associated with the Monitoring Company's services. Once the licensee has

complied with the terms of Probation, he must affirmatively petition the Board to request that the Probation be terminated. Dr. Ellinas' termination request must be accompanied by two consecutive favorable chart reviews from the Monitoring Company.

5. MD-17-0370A, HELEN E. WATT, M.D., LIC. #22016

RESOLUTION: Accept the proposed Consent Agreement for Decree of Censure and Two Year Probation. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing; and, no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course for medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal. Within thirty days, enter into a contract with a Board-approved monitoring company to perform periodic chart reviews. The chart reviews shall commence after proof of completion of the CME, and shall involve patient care rendered after completion of the CME. The physician shall be responsible for all costs associated with the CME coursework and the chart reviews. Once the physician has complied with the terms of the Probation, she may petition the Board to request Probation termination.

O. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING CASE RECOMMENDED FOR DISCIPLINARY ACTION

1. MD-17-0472A, RICHARD A. WALL M.D., LIC. #10250

Counsel Cody Hall, Esq. addressed the Board during the Public Statements portion of the meeting.

MOTION: Dr. Gillard moved for the Board to enter into Executive Session pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 2:03 p.m.

The Board returned to Open Session at 2:26 p.m.

No legal action was taken by the Board during Executive Session.

Board staff summarized that the case was initiated after a complaint was received regarding a boundaries violation involving the physician and the patient. The Board's SIRC Committee recommended offering the physician a consent agreement for a Letter of Reprimand and Probation. The Lead Board Member did not approve of discipline therefore the case is before the Board for action.

Dr. Gillard summarized his decision to decline SIRC's recommendation.

Dr. Paul opined he is uncomfortable with the informal recommendation from the psychosexual evaluator and opined that the physician should be invited to appear before the Board for an interview.

Board staff explained that for the physician to appear before the Board for a Formal Interview he must be offered a consent agreement for disciplinary action.

MOTION: Dr. Figge moved to offer the physician the proposed Consent Agreement for discipline as stated by SIRC. If the physician declines, he shall be offered the opportunity to appear for a Formal Interview or Formal Hearing.

SECOND: Dr. Connolly.

Dr. Gillard spoke against the motion. Ms. Jones noted that in 2013 the physician stated he would no longer hug patients, has already completed CME in boundaries and was advised not to hug patients. Ms. Jones also noted this is not the first complaint the

physician has received regarding boundaries. Ms. Salter agreed with Ms. Jones' statements.

VOTE: 8-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

P. LICENSE APPLICATIONS

i. APPROVE OR DENY LICENSE APPLICATION

1. MD-17-0258A, TARRA D. WASILCHEN, M.D., LIC. #N/A

Dr. Wasilchen addressed the Board during the Public Statements portion of the meeting.

Dr. Gillard summarized that there were issues with the applicant's post graduate training. Board staff recommended requiring the physician to obtain an updated psychiatric evaluation or allow the physician to withdraw in lieu of denial. Dr. Figge noted the supplemental material provided by the applicant of an evaluation from October 2015. Board members discussed whether an updated evaluation is needed.

MOTION: Dr. Farmer moved to return the case for further investigation to require the applicant to complete an updated psychiatric evaluation prior to consideration of licensure.

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

2. MD-17-0679A, GABRIEL U. OGBONNAYA, M.D., LIC. #N/A

Dr. Ogonnaya addressed the Board during the Public Statements portion of the meeting.

Dr. Gillard summarized that the physician's license was revoked for sexual misconduct and was found not guilty during his criminal trial.

Board staff summarized that the physician's license was revoked in 2012. In April 2017, Dr. Ogonnaya reapplied for licensure and answered affirmatively to questions related to his revocation. Dr. Ogonnaya has not practiced since his revocation and has not held an active license in any state. Board staff recommended denying licensure.

Dr. Farmer noted that the physician has outstanding issues since his revocation and has not been practicing.

MOTION: Dr. Farmer moved to deny the license based on A.R.S. § 32-1422(A)(4), (B), and (C); and, A.R.S. § 32-1458(A)(4). Dr. Ogonnaya shall be offered the opportunity to withdraw the application within thirty days. If the application is not withdrawn, the license shall be denied.

SECOND: Dr. Paul.

VOTE: 8-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.

MOTION PASSED.

3. MD-17-1248A, ABDUL K. HARES, M.D., LIC. #N/A

Dr. Hares addressed the Board during the Public Statements portion of the meeting.

Dr. Gillard summarized that Dr. Hares currently does not meet the minimum statutory requirements for an Arizona license and has only completed 18 of the 36 months of postgraduate training required for foreign medical graduates.

MOTION: Dr. Farmer moved to deny the license based on A.R.S. § 32-1422(A)(1-4), (B), and (C); A.R.S. § 32-1423(3); A.R.S. § 32-1425(A); and, A.R.S. § 32-1426(A)(2). The applicant shall be allowed to withdraw the application within thirty days.

SECOND: Ms. Bain.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

ii. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING LICENSE REACTIVATION

1. MD-17-1234A, JOHN H. MABRY, M.D., LIC. #9510

Dr. Gillard summarized that the physician has been offered an administrative job that requires him to have a full medical license.

MOTION: Dr. Figge moved to grant license reactivation.

SECOND: Ms. Jones.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

2. MD-17-1172A, LOENOR A. MADERAZO, M.D., LIC. #9642

Dr. Gillard summarized that the physician retired in 2010, has been issued pro bono licenses from 2010 to present, is up to date on CME requirements and has had no disciplinary action. The physician has obtained a position that requires a full medical license.

MOTION: Dr. Farmer moved to grant license reactivation.

SECOND: Ms. Jones.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

iii. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RENEWAL APPLICATION AND RECOMMENDED ADVISORY LETTER

1. MD-16-0409A, JOHN D. HUSTED, M.D., LIC. #34074

Dr. Gillard summarized that the physician had a malpractice case and denial of hospital privileges. The case was sent to an MC who found the care fell below the standard of care resulting in a California Board action.

MOTION: Dr. Figge moved to Grant the license renewal and issue an Advisory Letter for failing to reoperate in a timely manner on a post-bariatric surgery patient with persistent tachycardia. There is insufficient evidence to support disciplinary action.

SECOND: Ms. Salter.

VOTE: 8-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.

MOTION PASSED.

iv. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RENEWAL APPLICATION

MOTION: Dr. Farmer moved to grant the license renewal in item numbers 1 and 2.

SECOND: Dr. Paul.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

1. MD-17-1193A, CRISTINA D. POPOVICI, M.D., LIC. #30538

Dr. Figge knows of the physician but it would not affect his ability to adjudicate the case.

RESOLUTION: Grant the license renewal.

2. MD-17-1089A, MARGARET E. MATHUR, M.D., LIC. #49820

RESOLUTION: Grant the license renewal.

OTHER BUSINESS

Q. GENERAL CALL TO THE PUBLIC

No individuals addressed the Board during the General Call to the Public.

R. ADJOURNMENT

MOTION: Dr. Farmer moved to adjourn the meeting.

SECOND: Dr. Paul.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The meeting adjourned at 3:38p.m.

Wednesday, February 14, 2018

GENERAL BUSINESS

A. CALL TO ORDER

Dr. Gillard called the meeting to order at 8:03 a.m.

B. ROLL CALL

The following Board members were present: Dr. Gillard, Dr. Farmer, Ms. Bain, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter.

The following Board members were absent: Dr. Krahn.

ALSO PRESENT

Present among Board staff include: Carrie Smith, Assistant Attorney General ("AAG"); Anne Froedge, AAG; Elizabeth Campbell, AAG; Patricia E. McSorley, Executive Director; Kristina Fredericksen, Deputy Director; William Wolf, M.D., Chief Medical Consultant; Andrea Cisneros, Staff Investigational Review Committee ("SIRC") Coordinator; Raquel Rivera, Investigations Manager; Mary Bober, Board Operations Manager; and Michelle Robles, Board Coordinator.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

Individuals who addressed the Board during the Public Statements portion of the meeting appear beneath the matter(s) referenced.

LEGAL MATTERS

D. RESCIND REFERRAL TO FORMAL HEARING AND ACCEPT PROPOSED CONSENT AGREEMENT

1. MD-17-0198A, PHILIP J. BERENT, M.D., LIC. #45421

Elizabeth Campbell, AAG was present to provide independent legal advice to the Board. Anne Froedge, AAG was present on behalf of the State. Dr. Gillard summarized that the Illinois Medical Board took disciplinary action for inappropriate prescribing and Dr. Berent has signed a Consent Agreement for surrender of his Arizona license.

MOTION: Ms. Bain moved to accept the proposed Consent Agreement for surrender of licensure.

SECOND: Dr. Farmer.

Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Ms. Bain, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter. The following Board member was absent: Dr. Krahn.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

MOTION: Dr. Farmer moved to rescind the referral to Formal Hearing.

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

E. MOTION FOR REHEARING/REVIEW(Non-Contested)

1. MD-16-1514A, STEPHEN J. GRAHAM, M.D., LIC. #19987

Dr. Graham was not present.

Board staff summarized that the physician appeared for a Formal Interview at the October 2017 meeting and the Board voted to issue draft Findings of Fact and Conclusions of Law for a Letter of Reprimand and Probation. Dr. Graham timely submitted a request for rehearing or review and disclosed that he has a health condition that may affect his ability to provide direct patient care. Board staff presented a proposed

consent agreement that will allow Dr. Graham to continue to be employed by his current employer.

MOTION: Dr. Figge moved to grant review based on R4-16-103(D)(4) and accept the proposed Consent Agreement for Letter of Reprimand and Probation with Practice Restriction.

SECOND: Dr. Paul.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Dr. Paul and Ms. Salter. The following Board members abstained: Dr. Farmer, Ms. Jones. The following Board member voted against the motion: Ms. Bain. The following Board member was absent: Dr. Krahn.

VOTE: 6-yay, 1-nay, 2-abstain, 0-recuse, 1-absent.

MOTION PASSED

F. FORMAL INTERVIEWS

1. MD-16-1036A, PETER FERRARA, M.D., LIC. #20000

Dr. Ferrara was present with Counsel Paul Giancola, Esq. M.B. addressed the Board during the Public Statements portion of the meeting.

Board staff summarized that the Board initiated the case after receiving a complaint regarding Dr. Ferrara's care and treatment of MB, a 60 year-old female patient, alleging failure to properly conduct a cholecystectomy, and a delay in treatment. The MC identified deviations from the standard of care. The MC also determined that Dr. Ferrara's records were inadequate.

In opening, Dr. Ferrara noted his history with performing this procedure and explained that the goal is to promote patient safety and ensure an optimal outcome. Dr. Ferrara explained MB's symptomology, his treatment and the complications that arose from the procedure. Dr. Ferrara summarized the postoperative care he provided and the timetable of events that had occurred.

Mr. Giancola noted the MC's report did not include the correct timetable and characterization of the staff's phone calls.

During questioning, Dr. Ferrara elaborated on his rationale to complete the procedure instead on considering alternative solutions. Dr. Ferrara confirmed that the discussion to obtain consent took place but was not documented. Dr. Ferrara informed the Board of the mitigating steps he has taken to ensure his medical records are adequate. Dr. Ferrara noted that he had a second surgeon present during the procedure and explained the technique used during the operation. Dr. Ferrara opined that the nurses' distress call was not concerning as their findings were expected. In retrospect, he should have done a CT scan earlier and recognized the bleeding.

Board staff commented that this is a common operation complication; however, the critical view of safety is not described in the operative note and it is difficult to confirm what was said and done due to the inadequate documentation.

During deliberation, Dr. Farmer commented that there are dueling expert opinions but there is a clear medical records violation. Dr. Farmer opined that in hindsight there were missed opportunities. Dr. Farmer commented that it is unclear what was expressed to the physician by the nurse during the 2:44 a.m. phone call but found it mitigating that the physician examined the patient in the morning.

MOTION: Dr. Farmer moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) for reasons as stated by SIRC.

SECOND: Dr. Figge.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED/.

MOTION: Dr. Farmer moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(q) for failing to timely follow-up.

SECOND: Dr. Figge.

Board Staff confirmed quality of care deviation number five of Board staff's report.

VOTE: 8-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Farmer found many mitigating factors with regards to the quality of care deviations and noted that the outcome may have not been different. He further opined that the medical records violation is clear however; the physician has already taken steps towards remediation.

MOTION: Dr. Farmer moved to issue an Advisory Letter for failing to timely follow-up and for inadequate medical records. There is insufficient evidence to support disciplinary action.

SECOND: Dr. Paul.

Ms. Bain reiterated that although there were missed opportunities the physician did have a second surgeon present who agreed the procedure was successful and the physician provided expert opinions agreeing with Dr. Ferrara's care of the patient.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

2. MD-17-0409A, HOWARD M. HACK, M.D., LIC. #41179

Dr. Hack was present with Counsel Paul Giancola, Esq.

Board staff summarized that the Board initiated the case after receiving a Disciplinary Action Report stating that the California Board placed Dr. Hack's medical license on probation prohibiting him from supervising physician assistants and engaging in private/solo medical practice, and requiring CME in medical recordkeeping.

In opening, Dr. Hack explained his hospital resignation where the hospital submitted 12 cases for review and 3 cases were found to have deviations that resulted in the California action. Dr. Hack informed the Board of his completed CME courses regarding medical record keeping to prevent this from occurring in the future.

Mr. Giancola noted that due to the CA Board an investigation has been opened in every state the physician is licensed in and that the CA action was harsh. Mr. Giancola noted that the North Dakota Medical Board dismissed the case. If the Board requires Dr. Hack to comply with the CA Board Order he would not be compliant to due to California's practicing requirements. Mr. Giancola noted that the probationary action has been appealed.

During questioning, Dr. Hack explained why several of the patients underwent several colonoscopies in a 9 month timeframe. Dr. Hack explained that there were documentation errors due to having utilized seven separate medical record systems which he has since made steps to correct. Dr. Hack noted that he regularly refers a patient to a more experienced physician for removal of a polyp if he deems he is unable to remove the polyp.

In closing, Mr. Giancola noted that the physician went through a full evidentiary hearing where they found the physician competent, and that his procedure and treatment were appropriate and that the deviations were in regards to documentation.

MOTION: Dr. Paul moved for the Board to enter into Executive Session pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board entered into Executive Session at 10:43 a.m.
The Board returned to Open Session at 10:56 a.m.
No legal action was taken by the Board during Executive Session.

MOTION: Dr. Paul moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(o) for reasons as stated by SIRC.

SECOND: Dr. Farmer.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Paul moved to issue an Advisory Letter for action taken by the State of California. While the licensee has demonstrated substantial compliance through remediation that has mitigated the need for discipline, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

SECOND: Dr. Figge.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-15-1170A, MD-15-1067A, KENNETH M. FISHER, M.D., LIC. #12762
Dr. Fisher was present with Counsel Caul Raup, Esq.

Board staff summarized that these cases were initiated based on complaints of inappropriate prescribing. Dr. Fisher appeared before the Board for a Formal Interview in April 2017 where the Board moved for draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Probation with Practice Restriction which was accepted at the June 2017 meeting. Dr. Fisher timely filed for a Motion for Rehearing which the Board granted to review additional material. The MC reviewed the additional information submitted by Dr. Fisher, and found that his original conclusions in the cases were unchanged.

In opening, Dr. Fisher stated these complaints do not reflect his current practice. Dr. Fisher discussed his care for R.B. Dr. Fisher stated that the proposed practice restriction from last year is no longer needed due to the Governor's new legislation. Dr. Fisher stated that he currently has 12 patients for chronic pain management and he has been weaning these patients' opioid dosages. Dr. Fisher informed the Board of the population he treats and requested a consent agreement that allows him to continue to prescribe Suboxone to his patients that require it.

Mr. Raup noted the standard of care at the time of Dr. Fisher's treatment is not the same as today's standard of care.

MOTION: Dr. Figge moved for the Board to enter into Executive Session pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board entered into Executive Session at 11:17 a.m.
The Board returned to Open Session at 11:25 a.m.
No legal action was taken by the Board during Executive Session.

During questioning, Dr. Fisher responded to the MC's additional comments. Dr. Fisher informed the Board of the CME he has since completed on medical records, pain management, addiction medicine and controlled substance prescribing over the past four

years. Dr. Fisher explained the effects of combination drugs, such as Suboxone, and opioids. Dr. Fisher confirmed that he no longer treats the two patients in this case. In closing, Dr. Fisher stated that his current practice meets the standard of care.

Board staff confirmed that the restriction was not in effect due to the timely filing for rehearing.

Dr. Figge opined that regardless of the new information, the findings remain.

MOTION: Dr. Figge moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e), (q), and (l) for reasons as stated by SIRC.

SECOND: Ms. Bain.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Figge opined that due to the time that has passed and mitigating factors of continued education, the practice restriction no longer serves to protect the public. Dr. Figge opined that a Two Year Probation for chart reviews may be more appropriate and that the case still rises to the level of a Decree of Censure.

MOTION: Dr. Figge moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Two Year Probation. Within thirty days from the effective date of this Order, Dr. Fisher shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews with a focus on his controlled substance prescribing, at his expense. Board staff shall conduct quarterly CSPMP profile review for the duration of Probation. Once the licensee has complied with the terms of Probation, he may petition the Board to request Probation termination.

SECOND: Dr. Bethancourt.

Dr. Gillard agreed with the motion due to the changes in prescribing of Suboxone. Dr. Farmer noted comments the MC made in his supplemental report, that regardless of Dr. Fisher's sincere desire to treat his patients he still fell below the standard of care. Dr. Farmer expressed concern with the current motion and that it does not protect the public from potential new prescribing patterns of opiates.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter. The following Board member abstained: Ms. Bain. The following Board member voted against the motion: Ms. Jones. The following Board member was absent: Dr. Krahn.

VOTE: 7-yay, 1-nay, 1-abstain, 0-recuse, 1-absent.

MOTION PASSED.

2. MD-17-0692A, FRANCIS J. WOO, M.D., LIC. #10705

Dr. Woo was present without counsel.

Board staff summarized that the Board initiated case number MD-17-0692A after receiving information from DHS that Dr. Woo wrote 154 Medical Marijuana Certifications ("MMCs") for which he attested to having reviewed the qualifying patient's Controlled Substance Prescription Monitoring Program ("CSPMP") profile. Board staff noted that Dr. Woo's employee stated that she handles all the clerical duties for MMCs for him, including checking the history on the CSPMP and uploading all the proper documents. This implies that although Dr. Woo attests to it, he does not review the CSPMP data himself.

In opening, Dr. Woo stated he lives in a rural area that is subject to narcotics abuse and has since gotten involved in issuing the Medical Marijuana Certificates to treat patients to in pain to prevent patients from seeking narcotics off the street.

During questioning, Dr. Woo explained that when most of his medical marijuana patients are new to the practice, he confirms the qualifying debilitating disease as best he can by obtaining medical records to verify and document the diagnosis. Dr. Woo stated that he does conduct a physical examination, but does not follow-up after providing the certification until the patient requests an annual re-certification. Dr. Woo informed the Board that his office staff have been taught how to access the CSPMP and prior to seeing a patient there is a printed sheet in the file of all the medications the patient is taking.

MOTION: Dr. Bethancourt moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(t) for reasons as stated by SIRC.

SECOND: Ms. Jones.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Figge commented that the physician sees patients specifically for the certification without follow-up. Dr. Farmer commented that there appears to be a physical exam completed and an attempt to obtain patient history.

MOTION: Dr. Bethancourt moved to issue an Advisory Letter for attesting to have queried the CSPMP for patients receiving medical marijuana certifications when he had not. While the licensee has demonstrated substantial compliance through remediation that mitigates the need for discipline, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

SECOND: Dr. Paul.

Dr. Gillard commented that physicians must be aware of the requirements that must be followed when issuing MMCs. Dr. Figge opined it is aggravating that the physician has a history of Board action for inadequate medical records.

VOTE: 5-yay, 2-nay, 2-abstain, 0-recuse, 1-absent.

MOTION PASSED.

OTHER BUSINESS

H. CONSIDERATION OF DUAL JURISDICTION OF THE AMB AND THE ARIZONA HOMEOPATHIC BOARD

1. MD-18-0038A, JONATHAN B. MURPHY, M.D., LIC. #44962

Dr. Gillard stated that the complaint is from a physician regarding Dr. Murphy's treatment of a breast mass that continued to grow.

Board staff clarified that both Boards may take action based on the findings of the investigation but only one Board may conduct the investigation.

MOTION: Ms. Bain moved to assert jurisdiction for the complaint filed against Dr. Murphy. In the event that the Homeopathic Board also asserts jurisdiction, initiate arbitration proceedings, pursuant to A.R.S. § 32-2907.

SECOND: Ms. Jones.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

I. REQUEST FOR MODIFICATION OF BOARD ORDER

1. MD-17-0923A (MD-13-0279A), JOSEPH J. FRANZETTI, M.D., LIC. #26738

Board staff summarized that Dr. Franzetti violated his 2014 Order for Decree of Censure and Probation by utilizing CNAs and MAs as chaperones and not licensed healthcare providers as noted in the Order. The monitor reported that upon being notified that the Community Health Representatives ("CHR") did not meet the requirements of the Board Order, Dr. Franzetti was promptly and immediately scheduled an RN to serve as the chaperone. Board staff observed that the Associate Director claimed responsibility for the use of non-licensed medical staff due to a misunderstanding and staff turnover. The

Associate Director and the Monitor have confirmed that Dr. Franzetti has never been alone with a female client and that the CHRs, although not licensed, are trained in mandatory reporting requirements. Board staff recommended that the Board issue Dr. Franzetti an amended Order for Probation to allow CHRs to serve as chaperones at his current place of employment.

MOTION: Dr. Figge moved to grant Dr. Franzetti's request to modify his Board Order and amend the Board's previous Order for Probation to allow Community Health Representatives to serve in the capacity of a chaperone while treating female patients in all settings in the event that a licensed healthcare provider is unavailable. This modification is only applicable to Dr. Franzetti's current place of employment.

SECOND: Dr. Paul.

ROLL CALL: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Farmer, Dr. Bethancourt, Dr. Connolly, Dr. Figge, Ms. Jones, Dr. Paul and Ms. Salter. The following Board member was absent: Ms. Bain and Dr. Krahn.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

2. MD-14-1374A, ROHIT MALHOTRA, M.D., LIC. #33419

Dr. Gillard summarized that the physician was issued a Letter of Reprimand and Probation due to a prescribing issue. Dr. Malhotra timely filed for a Motion for Rehearing which was denied by the Board at the October 2017 meeting. The probationary requirements require the physician to complete a course offered by the Center for Personalized Education for Physicians ("CPEP") but Dr. Malhotra enrolled in a course offered by the University of California, San Diego Physician Assessment and Clinical Education Program ("PACE"). Dr. Malhotra is requesting that the Board accept PACE course in lieu of CPEP.

MOTION: Dr. Figge moved to grant Dr. Malhotra's request to modify the Board Order by accepting the completion of the PACE medical recordkeeping course in lieu of the CPEP medical recordkeeping course.

SECOND: Dr. Farmer.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

J. REQUEST FOR TERMINATION OF BOARD ORDER

1. MD-16-0348A, SUSAN B. GREGER, M.D., LIC. #47822

Dr. Greger addressed the Board during the Public Statements portion of the meeting.

Board staff summarized that in June 2016 the licensee signed a Consent Agreement for an Interim Practice Limitation due to a health condition. Dr. Greger has requested termination of the Limitation; which is supported by her treating provider.

MOTION: Dr. Figge moved to grant Dr. Greger's request to terminate her Interim Practice Limitation.

SECOND: Dr. Bethancourt.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

K. GENERAL CALL TO THE PUBLIC

No individuals addressed the Board during the General Call to the Public.

L. ADJOURNMENT

MOTION: Ms. Jones moved to adjourn the meeting.

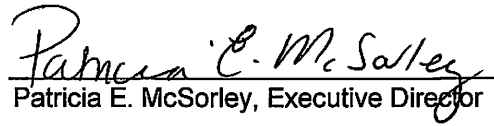
SECOND: Ms. Salter.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

The meeting adjourned at 1:31 p.m.




Patricia E. McSorley, Executive Director