



ARIZONA MEDICAL BOARD

1740 W. Adams St., Suite 4000 • Phoenix, Arizona 85007

Home Page: <http://www.azmd.gov>

Telephone (480) 551-2700 • Fax (480) 551-2705 • In-State Toll Free (877) 255-2212

FINAL MINUTES FOR SUMMARY ACTION TELECONFERENCE MEETING

Held on Thursday, January 23, 2020

1740 W. Adams St., Board Room 4100 • Phoenix, Arizona

Board Members

R. Screven Farmer, M.D., Chair
James M. Gillard, M.D., M.S., F.A.C.E.P., F.A.A.E.M., Vice-Chair
Edward G. Paul, M.D., Secretary
Jodi A. Bain, M.A., J.D., LL.M.
Bruce A. Bethancourt, M.D., F.A.C.P.
David C. Beyer, M.D., F.A.C.R., F.A.S.T.R.O.
Teresa L. Connolly, D.N.P., R.N., N.E.A.-B.C.
Laura Dorrell, M.S.N., R.N.
Gary R. Figge, M.D.
Pamela E. Jones
Lois E. Krahn, M.D.

GENERAL BUSINESS

A. CALL TO ORDER

Chairman Farmer called the Board's meeting to order at 6:17 p.m.

B. ROLL CALL

The following Board members participated telephonically: Dr. Farmer, Dr. Gillard, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Dr. Krahn. The following Board members were absent: Dr. Paul, Dr. Beyer and Dr. Connolly.

Present among Board staff include: Patricia McSorley, Executive Director; Kristina Fredericksen, Deputy Director; Carrie Smith, Assistant Attorney General (AAG); William Wolf, M.D., Chief Medical Consultant; Raquel Rivera, Investigations Manager; and Michelle Robles, Board Operations Manager.

C. CALL TO THE PUBLIC

No individuals addressed the Board during the Public Statements portion of the meeting.

LEGAL MATTERS

D. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SUMMARY ACTION

1. MD-18-0457A, MD-18-0909A, MD-19-0361A, MARC A. BAUDER, M.D., LIC. #15235
David Williams, Counsel, participated telephonically on behalf of Dr. Bauder.

Mr. Silva summarized that the Board initiated Case #MD-18-0457A on May 15, 2018 after receiving a complaint from SF alleging that Dr. Bauder was advertising on Craigslist and offering to treat patients with recovery issues or pain management issues using Suboxone for a \$400 office visit, which was cash pay only. Due to concerns related to the proper prescribing of controlled substances, Board staff selected four patients' records for a chart review (KV, MH, MG and PL) with the following allegations: Regarding KV and MH for inappropriate prescribing of Suboxone, regarding MG for inappropriate prescribing of buprenorphine and Alprazolam and regarding PL for inappropriate prescribing of buprenorphine. A Medical Consultant (MC) reviewed this matter and determined Dr. Bauder deviated from the standard of care by prescribing MG alprazolam with buprenorphine on multiple occasions between 6/2017-10/2018, noting that clonazepam was prescribed in the same frame. Although no medical records were available for the other patients, the MC reviewed their CSPMP and pharmacy records. The MC commented that the pharmacy records for MH & PL indicate high doses of buprenorphine. The MC opined that there was potential harm due to the high risk of diversion and/or overdose and possible death. The MC also

commented that managing dependency with opiate patients can be very demanding and felt that some of the patients were receiving too much medication without any increased benefit.

Case #MD-18-0909A was initiated on September 24, 2018 after receiving a complaint from RT, the father of JT alleging that Dr. Bauder was inappropriately prescribing controlled substances to JT. RT reported that JT has had several episodes of overdosing with a subsequent stint in rehab. Additionally, RT reported that JT loaned Dr. Bauder \$7,000. During the course of this investigation, additional allegations were identified alleging that Dr. Bauder was self-prescribing testosterone. In his response, Dr. Bauder stated JT had a long history of abusing oxycodone and fentanyl with ongoing alcoholism. Dr. Bauder acknowledged that JT has habitual addiction with multiple overdoses. Dr. Bauder disclosed that due to him having a prior history of addiction, he agreed to sponsor JT at NA. An MC reviewed this case and identified that Dr. Bauder had self-prescribed testosterone. However, the MC commented that he could not opine on the appropriateness of Dr. Bauder's prescribing of ketamine. A second MC reviewed the case and opined that Dr. Bauder deviated from the standard of care by failing to demonstrate professional boundaries, and by engaging in an unethical financial arrangement with a patient. The MC determined that Dr. Bauder failed to address risky behaviors noted in JT's medical records such as frequent early refills, snorting fake Oxy, overdose of Carfentanil, and probable diversion of Adderall. The MC also determined that Dr. Bauder failed to address concurrent mental health issues. Board staff also obtained information indicating that Dr. Bauder prescribed ketamine powder to Pharmacist TK on January 7, 2020.

Case #MD-19-0361A was initiated on April 15, 2019 after receiving a report from a pharmacist alleging that Dr. Bauder was prescribing JS controlled substances without establishing a patient/physician relationship. The pharmacist expressed concern that it appeared that Dr. Bauder was in Australia and attempting to fill prescriptions while outside of the country via WhatsApp. The pharmacist subsequently refused to fill the prescriptions. In his response, Dr. Bauder stated that he examined JS prior to leaving for Australia. An MC reviewed this case and opined that although a patient relationship was established with a face to face contact in the patient's home, the care fell below the standard. Specifically, the MC determined that Dr. Bauder not adequately evaluate the patient's history other than a comment that her back pain is due to muscles not being strong enough to support surgery. The MC commented that there was no information as to why JS was seeking a new pain management provider after receiving care for over a year with her previous provider. There was no assessment documented for potential substance abuse for a patient that has been prescribed high dose opiates. The MC also identified an inadequate informed consent for a patient being prescribed over 292 MME/day. The MC noted that managing chronic pain patients and addiction medicine is very complex and carries increased risk, which the MC stated was concerning since Dr. Bauder is managing these types of patients without an office. The MC stated that Dr. Bauder's behavior is unsafe as meeting patients in their homes, hotels and other locations carries tremendous risks and breaches of patient privacy. The MC also opined that communicating through WhatsApp does not meet HIPAA standards. The MC noted that according to the CSPMP Dr. Bauder wrote 1813 prescriptions of controlled substances to 151 patients between 4/16/18 and 4/16/19. Based on concerns for inappropriate prescribing, inadequate evaluations, failure to maintain appropriate boundaries with vulnerable patients, and history of discipline related to prescribing and boundary issues, a full practice restriction was offered to Dr. Bauder. Dr. Bauder requested a modification to the practice restriction, requesting that he only be restricted from schedule II controlled substances; however, based on the multiple concerns, his request was denied. Board staff maintains that a full Practice Restriction is warranted as the investigation is ongoing, and based on the totality of information, there exists an imminent danger to the public health and safety given Dr. Bauder's prescribing of controlled substances, his prior history and the concerns and deviations identified in the three cases investigated.

Mr. Williams stated that Dr. Bauder has not had disciplinary issues in over a decade which stemmed from his own substance abuse and argued that Dr. Bauder has since maintained his sobriety. Mr. Williams explained that Dr. Bauder's practice is structured as a concierge practice regarding addiction management related issues. Mr. Williams noted that most of Dr. Bauder's patients are treated with Suboxone. Mr. Williams argued that the \$7000 loan was due to a business transaction which should not be an issue as long as the patient relationship is maintained appropriately. Mr. Williams informed the Board that Dr. Bauder rejected the proposed Interim Practice Restriction as it would restrict Dr. Bauder from his livelihood. Mr. Williams requested that Dr. Bauder only be restricted from schedule II and schedule III controlled substances with the exception of allowing to prescribe Suboxone as the majority of his patients take this medication to treat addiction. Mr. Williams argued that this would allow Dr. Bauder to

continue to serve this vulnerable population as it would be difficult to transfer treatment to another provider and would increase the risk of relapse.

During Board deliberation, Dr. Krahn expressed concern regarding the allegation of inappropriate combination of Suboxone and Alprazolam as it was a significant dose of Alprazolam. Dr. Krahn also commented that a patient being treated for addiction being prescribe another habitual medication at such a high is concerning. Dr. Figge further expressed concern that the same patient received a prescription for Clonazepam and Adderall. Dr. Farmer inquired about some patients' medical records not being produced for the investigation.

Ms. Smith informed the Board that staff requested records for patients who received treatment from a drug treatment facility however, there is a federal law that prohibits the facility to provide records without patient consent.

Dr. Farmer expressed a deep concern regarding this physician's pattern of practice. There's a dangerous disregard for prescribing norms, concerning prescribing combinations, plus a lack of documentation of adequate workup and evaluation, there is a lack of privacy regarding communication especially for addiction medicine. Dr. Farmer also noted unclear self-prescribing patterns. Dr. Farmer opined overall there is a serious threat to the public safety. Dr. Bethancourt opined that the physician's mindset that he can treat patients telephonically from Australia, especially give his patient population, is inappropriate. Dr. Gillard inquired about telemedicine statutes that revolve around approved forms of telemedicine requirements.

Ms. Smith noted that the statute regarding telemedicine requirements require telemedicine examinations to be conducted with audio and video capability. Without knowing how WhatsApp is being used in the practice or how use was being documented Ms. Smith recommended citing this as an R violation instead of a TT violation. Ms. Smith also noted that the MC addressed this as a standard of care issue.

Dr. Krahn raised an issue regarding patients who are on significant doses of oxycodone and morphine. Dr. Krahn expressed concerns regarding prescribing patterns as well of the practice set up. There are concerns that the patients may not be able to receive care or have adequate communication from the physician in an emergency setting. Dr. Krahn opined that there are significant risks to the public given this situation.

Ms. Smith clarified that the Board's options include the Board taking no action, enter into an Interim Practice Restriction, Summarily Restrict and or Summarily Suspend the License.

Dr. Farmer summarized that he agreed with Board members expressions of concern regarding bizarre prescribing pattern and raised a concern that the physician is safe to practice in any capacity.

MOTION: Dr. Krahn moved for the Board to summarily suspend Dr. Bauder's Arizona medical license based on the finding that the public health, safety, or welfare imperatively requires emergency action by the Board.

SECOND: Dr. Bethancourt.

Ms. Smith explained that the Board is not required to make a recommendation when referring to Formal Hearing but may do so. Typically when the Board summarily suspends a license the Attorney General's Office, representing the State, requests revocation.

Dr. Krahn and Dr. Gillard discussed the possibility of restricting prescribing practices but allowing the physician to continue to prescribe Suboxone. Dr. Figge note that these are complex patients who require good comprehensive care, which they are currently not getting, and opined that a modified restriction would not ensure adequate care. Dr. Farmer agreed with that although these are vulnerable patients, this physician is providing standard care and opined that summarily suspending the license protects the patients. Dr. Farmer further recommended revocation in this case. Dr. Krahn agreed with Dr. Farmer's statements and recognized that although there may be transition of care issues, other resources can be identified. Dr. Krahn opined that ultimately the current state of patient care is unacceptable.

The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Dr. Krahn. The following Board members were absent: Dr. Paul, Dr. Beyer and Dr. Connolly.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

E. ADJOURNMENT

MOTION: Dr. Figge moved for adjournment.

SECOND: Ms. Jones.

The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Dr. Krahn. The following Board members were absent: Dr. Paul, Dr. Beyer and Dr. Connolly.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board's meeting adjourned at 7:00 p.m.




Patricia E. McSorley, Executive Director