Arizona Medical Board

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE B TELECONFERENCE MEETING
Held virtually via Zoom on Thursday, October 8, 2020

Committee Members
Edward G. Paul, M.D., Chair
Jodi A. Bain, M.A., J.D., LL.M.
David C. Beyer, M.D., F.A.C.R., F.A.S.T.R.O.
Laura Dorrell, M.S.N., R.N.
Gary R. Figge, M.D.

GENERAL BUSINESS

A. CALL TO ORDER

Dr. Paul called the Committee's meeting to order at 8:02 a.m.

B. ROLL CALL

The following Committee members participated in the virtual meeting: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.

ALSO PRESENT

The following Board staff participated in the virtually meeting: Kristina Fredericksen, Deputy Director; Kathleen Coffer, M.D., Internal Medical Consultant; Raquel Rivera, Investigations Manager; and, Amy Skaggs, Staff Investigational Review Committee ("SIRC") Coordinator. Also present was the Committee's legal advisor Mary D. Williams, Assistant Attorney General ("AAG");

C. OPENING STATEMENTS

Dr. Paul recognized the new format for the Board's committees to meet, and informed complainants in attendance of the virtual meeting that they would have the ability to address the Board at the start of their case being called for consideration as there is no Call to the Public on today's meeting agenda. Dr. Paul stated his appreciation for staff and the Committee members for their efforts in facilitating today's proceedings.

LEGAL MATTERS

D. FORMAL INTERVIEWS

1. MD-19-0424A, REZA A. ROD, M.D., LIC. #38069

   Dr. Rod and Attorney DeeDee Holden participated in the virtual meeting during the Committee's consideration of this matter.

   Board staff summarized that Dr. Rod previously entered into a Consent Agreement for Two Year Probation for chart reviews under case number MD-15-0894A which involved the care of 11 patients and issues relating to incomplete records and provision of unauthorized prescriptions were identified. In the current case, five patients' charts were pulled for review, one of which was a patient that had not been seen by Dr. Rod and another was a "no show" patient. The remaining three charts were found to be in compliance, with the exception of patient HM, a 49 year-old female who was seen by the Medical Assistant ("MA") for consultation and signed consent forms for Botox injections

with the MA noted as the patient's provider. The Medical Consultant ("MC") who reviewed the case was concerned that the patient's initial consultation, treatment plan, and treatment itself was carried out by the MA who is not a licensed medical practitioner. The Committee noted that the MA was a licensed aesthetician and laser technician, and that Dr. Rod had reported he reviewed charts on a weekly basis. While the MC was not critical of the administration of the injections, the MC continued to have concern regarding the performance of medicine by the MA and the physician not seeing the patient until she was well along in her treatment.

During the course of the investigation, three additional patients' charts were pulled for quality of care review, two of which were found to be completed without deficiencies. The third chart reviewed contained consent forms that did not clearly demonstrate the patient's initials, though the last page was signed by the patient and attested to having read and understood the forms. SIRC reviewed the case and observed that there appeared to be faint marks on the original consent forms that suggest the patient initialed the forms. However, in the matter involving patient HM, SIRC stated concerns that Dr. Rod allowed an MA to see the patient, outline a treatment plan, and administer Botox injections as the patient's provider.
Dr. Rod stated that dismissal of the concerns regarding the consent forms is clearly warranted in this matter. He stated that prior to the concerns being raised regarding scope of his oversight, he hired a Registered Nurse ("RN") on February 3, 2020 to provide injectable services, and the MA has been terminated. He stated that he understood the Board's requirements and asked that the Committee confirm that his treatment plan met those requirements to ensure that he is in compliance.

Dr. Paul stated that the issue concerning the consent forms was no longer a concern based on his review of the investigative file. Dr. Paul stated his concerns regarding patient HM and the question of Dr. Rod's oversight of an MA. He observed that the MC had commented that the MA appeared to have seen the patient initially, made a diagnosis and established a treatment plan, and administered the injections. Dr. Paul stated it was not clear whether Dr. Rod had any direct oversight of that process. Dr. Rod stated that the MA was also a licensed cosmetologist with extensive experience in injectable services. He stated that the MA had worked for two other plastic surgeons in the valley during that same time, which he stated was further evidence of her skills and qualifications. Dr. Rod stated that while the MA had informed him that the other two physicians were not always on site when she conducts treatments, he made sure that he was always on site when she was providing therapies for the patients.

Dr. Paul stated his concerns regarding physician oversight in this case, and stated that the fact that the MA held a cosmetology license is irrelevant to this review. Board staff pointed out that A.R.S. § 32-1456 outlines the tasks for MAs allowable under the direct supervision of a physician, as well as limited administrative tasks that may be performed when the MA is not being directly supervised. In response to Dr. Beyer's questions, Dr. Rod explained that patients presenting for Botox consultations are not seen by him at the initial consultation, and requested the Board's direction as to whether this process was acceptable. Dr. Rod also clarified that he was on site when the MA was in the office, but was not directly supervising her when she was providing these services. He pointed out that he is not required to directly supervise the RN while providing Botox injections and dermal fillers, and stated that he is on site most of the time and is available by phone on days that he is performing surgery offsite. Dr. Beyer questioned how "direct supervision" was being applied in this case. AAG Williams informed the Board that "direct supervision" is defined under A.R.S. § 32-1401(8).

During closing comments, Ms. Holden stated that according to the MC's report dated March 17, 2020, there was no issue with the physician allowing the MA to administer injectables and pointed out that the physician has hired an RN to provide these services as of February 3, 2020. She stated that Dr. Rod has cooperated with the Board's investigation, has been compliant with the Board's requests, and is trying to understand what is expected of him in terms of direct supervision. She stated that this matter did not

involve patient harm or any concerns regarding Dr. Rod's practice of medicine. Ms. Holden asked the Board to consider a shorter length of Probation for chart review monitoring and stated her concerns regarding potential delays in the chart review process that would prolong the probationary period. She stated that this matter did not identify concerns relating to Dr. Rod's competence to practice or his skillset. Ms. Holden also informed the Board regarding a number of actions Dr. Rod has taken to remediate the Board's concerns, including purchasing software geared toward practices for plastic surgeons, completion of two PACE CME courses, as well as implementation of interactive informed consent forms that require the patient to sign each page before moving on to the next.

The Committee discussed the differences in supervision requirements for MAs and RNs, and recognized that RNs often receive orders and administer treatment to patients without direct supervision. The Committee also noted that RNs are licensed healthcare practitioners with specialty training while MAs do not receive the same training and licensure. Dr. Paul stated that he found unprofessional conduct occurred in this case and spoke in favor of adopting the statutory violations as proposed by SIRC.

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

Dr. Beyer noted that the issues identified in this case are similar to the concerns that resulted in the 2017 Board Order for Probation and chart reviews. Dr. Beyer spoke in support of the motion, emphasized the importance of adequate supervision, and stated his concerns regarding the continuation of the same fundamental issues relating to the licensee's scope of practice and supervision.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Paul stated that he agreed with Dr. Beyer's comments, and stated his concerns relating to the same violations identified in the prior case that resulted in Probation that are similar to the concerns raised in the current case. Dr. Paul found it mitigating that Dr. Rod has taken corrective measures, has been responsive to the Board, and has changed his practice routines. Dr. Paul also noted that Dr. Rod has not had two consecutive favorable chart reviews. For these reason, Dr. Paul spoke in favor of SIRC's recommendation for disciplinary action.

MOTION: Dr. Paul moved for draft Findings of Fact, Conclusions of Law and Order for Three Year Probation. Dr. Rod shall be subject to quarterly chart reviews during the course of Probation. The chart reviews shall involve patients receiving dermal fillers and Botox injections. Dr. Rod may request that the Board terminate the Probation after two consecutive favorable chart reviews.
SECOND: Dr. Figge

The Committee noted that SIRC recommended termination of the prior Board Order that is currently in effect, and that the Committee did not have the authority to take action on that matter during today's proceedings. The Committee also noted that Dr. Rod may request termination of the Probation after receiving two consecutive favorable chart reviews. Additionally, the Committee instructed Board staff to conduct the chart reviews on a quarterly basis. Board staff clarified that the charts pulled for review will involve current patients seen after Dr. Rod hired the RN on February 3, 2020.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Committee requested that Dr. Rod submit a request to the Board for termination of the Order for Two Year Probation in case number MD-15-0894A for consideration at a future Board meeting.

E. FORMAL INTERVIEWS

1. MD-19-0876A, TALA S. DAJANI, M.D., LIC. #28837

Dr. Dajani and Attorney Scott Holden participated in the virtual meeting during the Committee's consideration of this matter.

Board staff summarized that this matter stemmed from a malpractice claim involving Dr. Dajani and that the MC who reviewed the case found that the physician deviated from the standard of care by failing to recognize laboratory evidence of patient BL's worsening renal condition, a situation that could have played a causative role in the child's failure to grow. The MC noted that Dr. Dajani relied on her clinical nurse specialist to review laboratory test results, including in an instance of a new patient whose ideology of failure to grow had not yet been established. Dr. Dajani ordered biannual laboratory work that she and the nurse agreed would be regularly obtained, but discovered via this case that the nurse thought the physician was reviewing the laboratory test results despite the fact that this did not follow her reported office protocol. Dr. Dajani failed to seek additional potential contributors to cause BL's short stature over the course of three years that she treated him. The referring pediatrician was aware of years of BL's rising creatinine levels and had the expectation that Dr. Dajani would be addressing this in her work up of the patient's short stature.

The nephrologist who subsequently cared for BL documented that it was unclear if the declining renal function was a major contributor to BL's short stature, but that it did not help the child's growth potential. BL's kidneys were so significantly scarred that ideology for the organ's failure could not be determined. BL was felt to be at very high risk for progressive chronic kidney disease as well as acute renal injury due to the severely scarred status of the organs. BL's chronic kidney disease advanced from stage 3 diagnosis to stage 5 and BL eventually underwent kidney transplant surgery. SIRC reviewed the case and found that Dr. Dajaji delayed referral to a nephrologist with a subsequent delay in treatment of chronic kidney disease and determined that this matter rises to the level of discipline. SIRC recommended a Letter of Reprimand and Probation to complete CME in chronic renal failure.

Dr. Dajani reported that she cared for BL from November 2012 through June of 2015. She stated that BL presented to her for evaluation of lack of growth and that she performed her typical evaluation with growth hormone stimulation testing as well as comprehensive evaluations for multiple other causes for the child's short stature. Dr. Dajani explained that her practice policy involved her clinical nurse specialist, with thirty years' experience in this area, to relay to her any abnormal laboratory results as a triage screen. Dr. Dajani stated that there was no evidence of hypertension, acidosis, proteinuria, or hematuria during the course of her treatment for the child, and that all of BL's kidney disease treatments occurred one year after he left her care. She informed the Committee that since this case, she no longer relies on others to review the patients' lab results. Dr. Dajani stated that she did not harm the patient, nor did she worsen the patient's congenital disease. Dr. Beyer stated his concerns regarding complete metabolic panels that were ordered on regular recurring intervals throughout the time of treatment that never appeared in the physician's notes to the referring provider, and never came across Dr. Dajani's desk. Dr. Dajani stated that these lab panels are ordered for growth hormone patients only, and that her office procedure failed in this instance.

Dr. Figge questioned the licensee regarding her background and training. Dr. Dajani reported that she completed a four year residency that combined internal medicine and pediatrics, and she also completed three years of specialty training from 2002-2005. Dr. Figge commented that the licensee is ultimately responsible for the patient's lab results regardless of the procedure set up in her practice for staff to report abnormal results only. He noted that BL was referred to Dr. Dajani for noted increases in his creatinine, and that the MC had stated that if treatment by a nephrologist would have been initiated sooner, it may have delayed or arrested some of the disease progression. Dr. Dajani stated that according to the nephrologist and biopsy, there was no immunopathology and that she believed based on congenitally scarred kidney, BL did not develop any complications that were treatable until much later. Ms. Dorrell questioned the physician regarding her current office procedures for receiving abnormal lab results. Dr. Dajani explained that she now reviews everything personally and sees a lot less patients. Dr. Paul noted that Dr. Dajani was subject to a malpractice suit and that she has clearly taken ownership of the concerns raised. He questioned her as to whether she has completed any scenarios of kidney disease in a child since this incident occurred. Dr. Dajani stated that she routinely performs self-study and that she would be willing to find a program specific to chronic kidney disease.

During closing comments, Mr. Holden stated that this is clearly a case where there was an error that occurred and was administrative in nature. He stated that this case did not involve an error in medical judgment or a lack of medical knowledge. He stated that three nephrologists reviewed this matter, one who treated the patient, and the others submitted reports from both sides of the malpractice litigation. Mr. Holden stated that this was a stage 3A kidney disease patient before and after Dr. Dajani cared for him, and that even after the diagnosis was made, there was no treatment initiated for at least one year from the time that the child left Dr. Dajani's care. Mr. Holden added that this case did not involve any patient harm.

Board staff clarified that the subsequent nephrologist initiated vitamin D supplementation in November of 2015, which is a form a treatment and was done far earlier than a year after seeing the patient. The nephrologist also prescribed iron supplementation the following month, December of 2015, and started sodium bicarb in October of 2016 as well as lisinopril. Dr. Beyer stated he found that unprofessional conduct occurred in this case in terms of medical recordkeeping and deviation from the standard of care with the potential for patient harm.

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

Dr. Beyer spoke in favor of the motion and commented that the process that was being followed in Dr. Dajani's office had the potential to cause harm to the patient.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Beyer stated that an error clearly occurred in this case, and that there was a system in place that was potentially dangerous for patients. Dr. Beyer stated it was also clear that Dr. Dajani understood renal disease in the pediatric patient population and recognized the importance of making changes in her practice to avoid a similar problem in the future. Dr. Beyer spoke in support of issuing the licensee an Advisory Letter to resolve this matter.

MOTION: Dr. Beyer moved for the Board to issue an Advisory Letter for failure to recognize and timely refer a patient to nephrology for elevated creatinine levels..

While the licensee has demonstrated substantial compliance through rehabilitation or 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: Dr. Figge

Dr. Figge recognized that this matter stemmed from a medical malpractice claim. He stated that he found CME was not warranted in this matter, and spoke in favor of issuing an Advisory Letter for tracking purposes. Dr. Paul spoke in support of the motion, stating that he recognized that Dr. Dajani has taken ownership of what occurred and has changed her practice style to prevent a similar occurrence.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

F. FORMAL INTERVIEWS

1. MD-19-0095A, MD-19-0356A, KEITH G. ZACHER, M.D., LIC. #30227

Dr. Zacher and Attorney Steve Myers participated in the virtual meeting during the Committee's consideration of this matter. The complainant also participated in the meeting, and stated that he was thankful the Board has recognized the issue of excessive charges by providers as unprofessional. The complainant also stated that Blue Cross/Blue Shield ("BC/BS") felt that Dr. Zacher has capitalized by terminating his contract with them and charging egregious amounts for emergency surgeries.

Board staff summarized that case number MD-19-0095A was initiated after receiving notification from BC/BS alleging excessive and improper billing for services rendered by the licensee. Board staff reported that in 2018, Dr. Zacher submitted claims totaling $1,912,923.82 with a similar amount of $1,989,200.00 in claims submitted under his assistant's NPI number. According to BC/BS statistics, Dr. Zacher's procedures performed in 2018 compared to others showed that his fees were between 265% to over 2,000% higher for the same procedures. Board staff summarized that case number MD-19-0356A was initiated after receiving a complaint from BC/BS regarding Dr. Zacher's care and treatment of a 47 year-old female ("YK") alleging performance of surgery not medically necessary and obtaining a fee by fraud, deceit, or misrepresentation. The MC who reviewed the case found that Dr. Zacher met the standard of care with regard to the procedure; however, the MC stated that the physician's documentation lacked clinical reasoning to support operating on the patient, there was no documentation that the physician discussed other options with the patient or that other possibilities were ever considered. The MC identified concerns regarding Dr. Zacher's billing practices, noting that he billed 52 times the allowable amount for the patient's operation. The MC further expressed concern regarding the billing practices in that they allow the licensee to take advantage of patients in a vulnerable state and stated that the charges were unprofessional.

SIRC considered the cases together and found that the licensee charged excessive fees that were found to exceed usual and customary reimbursement amounts, and noted that the MC identified concerns regarding the physician's medical recordkeeping in case number MD-19-0356A. SIRC observed that the practice of only seeing patients in the Emergency Department ("ED") and the physician's decision to remain out-of-network with private insurers has led to excessive claims for emergency surgery.

Dr. Zacher stated that he loves being a surgeon, that he lives to operate and save lives, and that he truly believes that surgery was his calling as a profession. He stated that he has been in practice nearly 20 years, has treated an operated on thousands of emergency surgical and traumatic injury patients, and that his entire focus has been to provide the best possible surgical care for his patients. Dr. Zacher explained that he left a

multi-group practice two years ago and in good faith attempted to recontract with the major insurance plans, but was offered an abysmal rate or no contract at all. He stated that in order to sustain his practice, he had to become an out-of-network provider. Dr. Zacher reported that he has hired a billing expert and consulted with legal counsel to ensure that his out-of-network billing practices are legal, ethical, and common. He stated that a certified Medicare auditor reviewed the last five years of his billing using common practice and standard billing formula for out-of-network charges and it was determined that his billing was in line and, in most cases, his fees were at the lower end. Dr. Zacher stated his concerns that the Board did not compare his billing to other out-of-network surgeons. He stated that staff selected in-network and Medicare provider rates for the comparison.

Mr. Myers stated that the Board's definition of unprofessional conduct mandates the Board to consider the range of fees customarily charged for similar services. He stated that the only way to reliably make such a determination would have involved subpoenaing charges and collections from billing companies for out-of-network surgeons. Mr. Myers reported that the billing company employed by Dr. Zacher bills for 300 surgeons, almost all of which are out-of-network providers, and that the charges and collections of these surgeons are going to be the same as those of Dr. Zacher. Mr. Myers stated that the Board's staff did not or chose not to report to the Board FIAR Health's out-of-network charges, and that BC/BS was not candid in their complaint to the Board and should have relayed that it ceased all reimbursement for what are not Dr. Zacher's most recent 41 surgeries, in addition to 21 surgeries previously performed for which there was no payment whatsoever by BC/BS. Mr. Myers stated that Dr. Zacher has no prior Board history, and that the Board should realize that many surgeries for which he has not been paid by BC/BS including 2 of the 6 surgeries that are subject to this investigation. Mr. Myers stated that there is no evidence that Dr. Zacher has engaged in unprofessional conduct because all of the data is based upon in-network providers.

Ms. Dorrell stated her concerns regarding the CPT codes used for the patients reviewed in that they differed from those indicated by CMS and the Industrial Commission of Arizona ("ICA"), and questioned the licensee regarding how he associates his CPT codes with his fees. Dr. Zacher explained that the CPT codes are generated through the billing company and that CMS and ICA lists fixed amounts that he stated is a whole different billing realm compared to out-of-network billing. Ms. Dorrell also questioned whether the licensee charges patients for what the insurance company does not cover. Dr. Zacher stated that he has never collected fees from patients for any balance not paid by insurance.

Dr. Figge stated his concerns regarding the fact that despite having been practicing for 18 years, the licensee is still not up to date on appropriate billing practices and ignorant to the process. Dr. Zacher stated that his billing company handles everything in terms of billing, and clarified that when he left the multi-group practice, his contract was still valid through that provider number; however, he was told that his reimbursement was less than what it was when he was with a larger group. Dr. Zacher stated that for this reason and because he cannot sustain his private practice with those rates, he elected to terminate his contracts. Dr. Zacher further clarified that he instructed his billing company not to bill patients for outstanding balances as he does not believe that a patient should be responsible for any extra bill whatsoever. Dr. Figge questioned Board staff regarding the statements made concerning the lack of out-of-network data to compare the fees schedules in this case. Ms. Rivera explained that the two cases were assigned to two investigators certified in billing and coding. She stated that a mechanism does exist for staff to obtain the out-of-network data from FAIR Health, and that staff has recently been provided with log-in credentials to obtain that data if requested by the Board. Ms. Rivera confirmed that the data pulled from FAIR Health related to in-network providers only.

In response to Dr. Beyer's questioning, Dr. Zacher confirmed that he participates in Medicare, and that he and his billing company follow all of their regulations. Dr. Beyer stated his concerns regarding the physician charging fees that are 50 times the usual and

customary rates per Medicare, noting that the majority of out-of-network physicians charge fees 2-10 times the Medicare rates. Dr. Paul questioned the licensee as to what he submits to the billing company to generate the billing process. Dr. Zacher explained that submits his operative note, his dictation for the consultation and exam, as well as a face sheet, and stated that he does not assign billing codes himself. In response to Dr. Paul's questioning as to how often the licensee meets with his billing company to review his number, Dr. Zacher stated that he does not personally meet with the billing company and that his office manager handles these administrative duties.

MOTION: Dr. Figge moved for the Committee to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Ms. Dorrell
VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board entered into Executive Session at 10:39 a.m.
The Board returned to Open Session at 10:51 a.m.
No legal action was taken by the Board during Executive Session.

Dr. Figge spoke in favor of returning the case for further investigation for Board staff to obtain the necessary out-of-network data to compare to the licensee's fee schedule and determine the usual and customary fees. Dr. Figge also suggested querying the licensee's billing company to determine what Dr. Zacher's patients are being charged. Ms. Dorrel agreed with Dr. Figge's suggestions, and stated that she did not feel as though there was enough information in this case to determine a resolution at this time.

During closing comments, Mr. Myers stated his objection to the suggestion of returning the case for further investigation. He stated that on multiple occasions throughout the Board's investigation, he attempted to warn staff that they did not have the correct out-of-network data, and that the Board should not subject the licensee to additional investigation. Board staff reiterated that the charges are concerning, and that the fees are not common for out-of-network or in-network billing. Board staff pointed out that in the matter involving patient YK, Dr. Zacher billed $88,000.00 for a 17 minute procedure, and that the FAIR Health out-of-network data will most likely continue to demonstrate a discrepancy.

Ms. Dorrell reiterated during deliberations that there was not enough data to make a determination at this time, and again spoke in favor of returning the matter for further investigation.

MOTION: Ms. Dorrell moved for the Board to return the case for further investigation for Board staff to review and compare out-of-network billing.
SECOND: Dr. Figge

Dr. Beyer spoke against the motion and stated that there was enough information for the Board to determine that these were excessive fees. He stated that the resource based relative value system was created by Medicare to use to establish a number that is reasonable in comparison to other providers and is commonly used to by physicians to establish their fee schedule. Dr. Beyer noted that out-of-network providers often charge 2-10 times the Medicare rates and that based on this data, he finds that the licensee's fees are excessive and well outside the bounds of what would be considered reasonable, usual and customary. Dr. Beyer stated his concerns regarding uninsured patients being charged the same excessive fees as patients with health insurance coverage, and stated that based on the physician's own admission, an excessive fee is utilized as a starting point for fee negotiations. Dr. Beyer reiterated his objection to the motion and stated that these were clearly excessive fees. Dr. Paul spoke in favor of the motion and stated that

additional data is needed to support the determination of excessive fees for out-of-network services.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Ms. Dorrell, and Dr. Figge. The following Committee member voted against the motion: Dr. Beyer. The following Committee member was absent: Ms. Bain.
VOTE: 3-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-19-0195C, CORDELL A. ESPLIN, M.D., LIC. #15333

Dr. Esplin and Attorney Scott Theobald participated in the virtual meeting during the Committee's consideration of this matter.

Board staff summarized that this case was initiated after the Board received a complaint regarding Dr. Esplin's care and treatment alleging performance of procedures not indicated with resultant bad outcomes and incentivizing referrals for the purpose of performing procedures. Two patients' charts were pulled for quality of care review regarding patients GW and DD. The Medical Consultant ("MC") found that Dr. Esplin met the standard of care in his treatment of patient GW. The MC found that Dr. Esplin deviated from the standard of care in his treatment of patient DD by failing to recognize developing ischemia to the patient's left foot. SIRC reviewed the case and noted that no concerns were raised regarding Dr. Esplin's care of patient GW. SIRC observed that in the matter involving patient DD, Dr. Esplin failed to respond appropriately in the immediate post-procedure recovery and the MC identified significant inconsistencies in the physician's pre-procedure physical exam findings and the post-procedure diagnostic imaging did not confirm re-establishment of blood flow to the left foot. SIRC noted that less than four hours after surgery, DD presented to the ER and ultimately underwent amputation with a complicated recovery course.
Dr. Esplin stated that DD was a severely ill patient with vascular disease, and that he did everything medically possible to save his leg. Mr. Theobald stated that Dr. Esplin has practiced interventional radiology for the past 35 years without any malpractice cases initiated against him and with no prior Board complaints filed by patients. He stated that they believed the complaint was filed to besmirch the reputation of the clinic to which Dr. Esplin was previously affiliated when he treated DD. Mr. Theobald stated that DD presented with multiple conditions and had undergone nine previous vascular interventional procedures in the two years preceding the time when Dr. Esplin was involved in his care, indicative of extreme vascular illness. He stated that the interventions provided by Dr. Esplin were an attempt to avoid leg amputation, and that despite the physician explaining to DD the chances of success were marginal at best, the patient elected to proceed with left lower extremity angiogram interventions. Mr. Theobald stated that DD's prior kidney damage prevented the physician from imaging the procedure in the usual fashion as the amount of contrast needed would have placed the patient at risk of further kidney damage or outright kidney failure. He stated that the MC did not have the benefit of seeing what Dr. Esplin saw at the time as real-time fluoroscopic imaging was utilized to guide and monitor the procedure. Mr. Theobald further stated that the MC did not correctly interpret an image that showed there was continuous blood flow restored to the patient's lower extremity, and that thrombolytics were not administered to the patient due to history of stroke. Mr. Theobald pointed out that despite ultimately undergoing leg amputation, the patient did not complain about the care he received by Dr. Esplin.

Dr. Figge questioned the licensee regarding his training in interventional vascular procedures as well as how he stays up to date with newly developed technologies that become available in this field of medicine over time. Dr. Esplin reported that he completed a residency program at Massachusetts General Hospital as well as a fellowship in interventional radiology at Brown University. He stated that he has worked at multiple facilities located in Phoenix, and that he belongs to the Society of Interventional Radiologists. Dr. Esplin added that he has worked full-time as an interventionalist for over

30 years and that he undergoes additional training when new procedures and technologies become available. He further reported that has been treating patients with below the knee peripheral vascular disease primarily for over ten years. Dr. Figge noted that patients with peripheral vascular disease usually present with a myriad of comorbidities, and questioned the licensee as to his training in caring for postoperative vascular patients. Dr. Esplin stated that he has worked in hospitals and clinics for thirty years and has cared for both pre and postoperative patients during that time.

Dr. Figge observed that a number of documentation discrepancies were noted by the MC regarding DD's clinical presentation in comparison to nursing notes. Dr. Esplin attributed documenting normal gait in a wheelchair bound patient with history of stroke presenting with gangrene in the foot to the use of a template. Dr. Figge noted that the licensee documented that the patient was ready for discharge while nursing staff documented that the patient was writhing in pain. Dr. Esplin explained that the patient had pain prior to, during, and following the procedure and that the patient did not want to present to the ER for fear of amputation. Dr. Esplin stated that he prescribed Percocet for the patient, and that DD's wife, his primary care giver, was very comfortable administering insulin to control and monitor his diabetes at home. He stated that he offered to monitor the patient after administering 10 units of insulin and recheck his blood sugar to see if it decreased from 400, to which the patient and wife declined, and that he also instructed the patient to go to the ER if his pain worsened. Dr. Figge noted that these discussions were not documented in Dr. Esplin's chart notes. Dr. Esplin stated that he, DD, and DD's wife were all on the same page, and that he did not feel that detailed discussion was needed in the chart unless there was a disagreement between them.

In response to Dr. Beyer's questioning, Dr. Esplin confirmed that he is board certified by the American Board of Radiology with lifetime appointment, and that he attends regular CMEs. Dr. Esplin explained the practice environment, which he stated was similar to other outpatient surgery centers, he reiterated that he is no longer a part of the multi-group practice, and clarified that he had no financial interest in that group. Dr. Beyer stated his concerns regarding the patient care that was rendered while DD was in the recovery area, and that he was troubled by the nursing notes. Dr. Beyer recognized that DD was a sick patient at very high risk of amputation, and stated that it was difficult to understand the physician's thought process when reviewing the patient's chart. Dr. Esplin stated that the record was maintained by the nurse and that he could not recall whether the nurse was present during his discussions with the patient and his wife.

Dr. Paul noted that the case occurred almost three years ago and that the patient requested the physician's interventions as a last resort before amputation. Dr. Paul questioned the licensee as to his feelings when he reviewed the post procedure imaging. Dr. Esplin stated that he was no optimistic that the intervention was going to be successful. Dr. Paul observed that the MC was critical of Dr. Esplin's failure to respond in a timely manner during the post procedure period. Dr. Esplin stated that he was not contacted the evening that the patient presented to the ER, and confirmed that when he became aware of it the next morning, he discussed DD with the attending physician. Dr. Esplin informed the Committee that he retired from the practice of medicine 1.5 years ago.

During closing comments, Mr. Theobald stated that Dr. Esplin has an impeccable record of practice and professional reputation. He stated that the licensee met the standard of care in his treatment of DD as he clearly recognized the ischemia in this high risk patient, and that it was only a matter of time before amputation was needed. Mr. Theobald stated that Dr. Esplin heeded the patient's wishes and tried to help the patient keep his leg as long as possible, but it was not meant to be. He stated it would be grossly unfair to censure the licensee as a matter of medical judgment and that this case does not rise to the level of any Board sanction. Board staff emphasized the importance of medical record documentation as it is vital for the Board to have the ability to examine and understand what took place and the care that was rendered. Dr. Esplin agreed with these comments, and stated that context is rarely documented in medical charts. He stated that he dictates

that the risks and benefits were discussed and consent was obtained, but he did not document that the patient wanted to avoid amputation.

Dr. Figge found that Dr. Esplin engaged in unprofessional conduct in this matter and spoke in favor of adopting the statutory violation as recommended by SIRC.

MOTION: Dr. Figge moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27)(r) for reasons as stated by SIRC.
SECOND: Dr. Beyer

Dr. Beyer stated that the standard of care as explained in the physician's testimony caused him to question whether a violation of A.R.S. § 32-1401(27)(r) occurred versus a medical recordkeeping violation. Dr. Beyer stated that the physician should have been noticed for a potential violation of A.R.S. § 32-1401(27)(e) for inadequate medical records as the rationale for doing the procedure for DD, while valid and reasonable, was not memorialized in the patient's chart. Dr. Beyer also stated his concerns regarding the lack of documentation of what took place as well as the physician's thought process in the recovery area. Dr. Beyer stated that he found Dr. Esplin engaged in unprofessional conduct in this matter and spoke in support of replacing the (r) violation with an (e) violation for inadequate medical records.

Dr. Figge spoke in favor of the motion and stated his concerns regarding the discrepancies between the nursing notes and the physician's documentation relating to the status of the patient post-procedure. Dr. Paul stated that he appreciated Dr. Esplin's testimony, and noted that the documentation regarding DD's care was inadequate. Dr. Beyer stated that based on his review of the case, the care that was documented suggested poor care was rendered to DD in the postoperative setting.

VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Figge stated that he agreed with Dr. Paul's comments, and applauded the physician for taking on a case with very low likelihood for success in an attempt to avoid amputation. Dr. Figge stated that the patient should have received help from the facility instead of being discharged, and stated his concerns regarding the lack of documentation. Dr. Figge stated that he found this matter did not rise to the level of discipline and spoke in favor of issuing an Advisory Letter for the violations of A.R.S. § 32-1401(27)(e) and (r). Dr. Figge recognized that Dr. Esplin has retired from the practice of medicine.

MOTION: Dr. Figge moved for the Board to issue an Advisory Letter for failure to respond appropriately to post-procedure studies that suggested failure of the revascularization attempt and failure to address the patient's extreme pain level and persistent pulselessness post-procedure in addition to insufficient medical recordkeeping. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.
SECOND: Ms. Dorrell
VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

OTHER BUSINESS

H. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Paul stated that he was impressed with the platform utilized to facilitate today's proceedings. Dr. Beyer commented that he found the meeting went very well, and that it was helpful having the ability to see the respondents as they addressed the Committee.

The Committee discussed alternatives for situations where a member may not be available to attend the Committee's meeting and substitutions for members. Committee members commended Board staff for facilitating today's meetings, including the process of entering and returning from Executive Session that did not appear to be disruptive.

I. ADJOURNMENT

MOTION: Dr. Figge moved for adjournment.
SECOND: Dr. Beyer
VOTE: The following Committee members voted in favor of the motion: Dr. Paul, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Committee member was absent: Ms. Bain.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Committee's meeting adjourned at 12:32 p.m.

Patricia E. McSorley, Executive Director