



## Arizona Medical Board

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### FINAL MINUTES FOR BOARD REVIEW COMMITTEE A TELECONFERENCE MEETING

Held via Zoom on Thursday, December 3, 2020

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

#### *Committee 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

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

Pamela E. Jones

Lois E. Krahn, M.D.

#### GENERAL BUSINESS

##### A. CALL TO ORDER

Chairman Farmer called the Committee's meeting to order at 8:03 a.m.

##### B. ROLL CALL

The following Board members participated in the virtual meeting: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.

##### ALSO PRESENT

The following Board staff participated in the virtual meeting: Kristina Fredericksen, Deputy Director; Kathleen Coffey, M.D., Internal Medical Consultant; Michelle Robles, Board Operations Manager; and, Andrea Cisneros, Minutes Administrator. Also present: Carrie Smith, Assistant Attorney General ("AAG")

##### C. OPENING STATEMENTS

Chairman Farmer informed meeting attendees of the Board's Civility Policy.

##### D. APPROVAL OF MINUTES

- October 8, 2020 Board Review Committee A Teleconference, including Executive Session  
**MOTION: Ms. Jones moved for the Committee to approve the October 8, 2020 Board Review Committee A Teleconference, including Executive Session.**  
**SECOND: Dr. Krahn**  
**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**  
**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.**  
**MOTION PASSED.**

#### LEGAL MATTERS

##### E. FORMAL INTERVIEWS

1. MD-19-0985A, THANES J. VANIG, M.D., LIC. #24745

Board staff summarized that this matter was initiated after the Board received notification of a malpractice settlement involving Dr. Vanig, which alleged negligent prescribing of narcotic medications to patient RG. During the Board's investigation, patients RE and DM

were selected for quality of care review based on CSPMP data. The Medical Consultant ("MC") who reviewed the case identified multiple deviations from the standard of care for each patient including inappropriate prescribing and recordkeeping concerns. The MC observed that there was a lack of risk assessment, evaluation for patient compliance, as well as concomitant prescriptions for opioids and benzodiazepines without documented rationale. The MC also found that the medical records were sparse and inadequate. The MC recognized that the notes and care were similar in all three patients, establishing a pattern of deviations from the standard of care.

Dr. Vanig participated in the virtual meeting during the Committee's consideration of this matter, made a statement and answered Committee members' questions. Attorney Cristina Chait also participated in the virtual meeting on behalf of Dr. Vanig and made a statement. Dr. Vanig stated that patient RE was also being followed by a pain specialist who agreed with his treatment plan. He stated that patient DM was on high dose opioids that he successfully weaned off in the past and continued to see a neurologist who agreed with the treatment plan. Dr. Vanig stated that he has improved his practice and strictly follows the recommended guidelines. Ms. Chait stated that Dr. Vanig took it upon himself to undergo the necessary coursework to help him make policy changes to adhere to recommendations made in the reports filed in this case. She asked the Board to consider issuing a non-disciplinary Advisory Letter as she believed this was a more appropriate resolution to this matter under the circumstances.

Dr. Bethancourt stated he found that Dr. Vanig engaged in unprofessional conduct in this case and spoke in support of adopting the violations sustained by SIRC.

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

**SECOND: Vice-Chairman Gillard**

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

Dr. Bethancourt stated his concerns regarding polypharmacy and the physician's lack of knowledge of drug-to-drug interactions and contraindications. Dr. Bethancourt stated that he agreed with the recommendation for disciplinary action and suggested requiring completion of CME in prescribing benzodiazepines and opioids in addition to the recommended medical recordkeeping CME. Dr. Krahn stated that she shared other members' concerns and emphasized the need to be knowledgeable to the risks, benefits and alternatives to benzodiazepines.

**MOTION: Dr. Bethancourt moved for draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Two Year Probation. Within 12 months, complete the intensive, in-person course regarding medical recordkeeping offered by CPEP; and, complete no less than 5 hours of Board staff pre-approved Category I CME in prescribing opioids and benzodiazepines. Within 30 days of completing the Board ordered CME, the physician shall enroll into CPEP's personalized implementation program ("PIP"). The CME hours shall be in addition to the hours required for license renewal. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Vanig's request for termination shall be accompanied by proof of successful completion of the CME.**

**SECOND: Dr. Krahn**

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

## **F. FORMAL INTERVIEWS**

1. MD-20-0077A, DANIEL E. WESCHE, M.D., LIC. #20534

Board staff summarized that this matter stemmed from notification of a malpractice settlement on behalf of Dr. Wesche regarding his care and treatment of patient WJ alleging negligent postoperative care of open excision of pancreatic cystic lesion. The MC found that Dr. Wesche deviated from the standard of care by failing to obtain informed consent, and by failing to evaluate and treat a postoperative pancreatic leak. The MC also found that there was a lack of aggressive approach, that intraoperative nucleation was a poor choice, lack of documentation regarding the operation, and concerns that the patient should have been referred to a specialty center.

Dr. Wesche and Attorney Rick Delo participated in the virtual meeting during the Committee's consideration of this matter, made statements, and answered Committee members' questions. Dr. Wesche reported that he has been a practicing surgeon in Flagstaff for over twenty years. He explained that when the patient presented to his office, she arrived with her mother and was originally referred for umbilical hernia. Dr. Wesche stated that he discussed with the patient her abdominal pain, reviewed CAT scans and records, and determined that her epigastric pain seemed to be most concerning. Dr. Wesche stated that the patient's death was unfortunate and frustrating as he believed that this was a straightforward surgical case with a simple cyst. Dr. Wesche pointed out that there were a number of other providers involved in the patient's care. Mr. Delo stated that Dr. Wesche has no prior Board history, has significant training and experience in pancreatic surgery, and that the physician takes this matter seriously. He stated that the malpractice settlement had nothing to do with concerns over Dr. Wesche's care and treatment of the patient, and that there was no issue or claim relating to informed consent. Mr. Delo stated that the physician met the standard of care in this case and asked the Committee to dismiss the investigation.

Board staff clarified that there appeared to be cut and pasted abdominal examinations throughout this patient's chart, the medical records were lacking pertinent information, and that simple nucleation rather than resection was not sufficient to determine whether the pancreatic duct was impacted during surgery. Vice-Chairman Gillard stated that after hearing from the parties and reviewing the case, he found that the quality of care violation was not supported, and spoke in favor of sustaining a medical records violation.

**MOTION: Vice-Chairman Gillard moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27) (e) for reasons as stated by SIRC.**

**SECOND: Dr. Krahn**

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

Vice-Chairman Gillard stated that after extensive review of the patient's chart, he did not have concerns relating to the patient's care, and found that the medical records violation does not rise to the level of discipline. Vice-Chairman Gillard spoke in favor of issuing a non-disciplinary Advisory Letter to resolve the case.

**MOTION: Vice-Chairman Gillard moved for the Board to issue an Advisory Letter for inadequate medical records. The violation was a minor or technical violation that is not of sufficient merit to warrant disciplinary action.**

**SECOND: Dr. Krahn**

Dr. Krahn spoke in favor of the motion, recognized that this matter did not stem from a patient complaint, and stated that she was impressed with how much care this physician devoted to the patient and how hard he has looked at the subsequent events to try and understand what happened. Dr. Bethancourt spoke in support of the motion and agreed that the patient's death was likely due to pulmonary embolism. Ms. Jones stated that she appreciated hearing from the licensee during these proceedings. Chairman Farmer

stated that he agreed with other members' comments, that the records were clearly deficient in this case, and that hearing from the licensee was helpful in this matter.

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

## **G. FORMAL INTERVIEWS**

1. MD-18-0863A, MD-19-0723A, MD-19-0954A, MD-20-0049A, MICHAEL S. KUNTZELMAN, M.D., LIC. #13565

Board staff summarized that in case number MD-16-1257A, Dr. Kuntzelman was issued a Letter of Reprimand and Probation for inappropriate prescribing. Dr. Kuntzelman was restricted from prescribing Suboxone or Buprenorphine, and was subject to periodic chart reviews during the probationary period. Case number MD-18-0863A was initiated after CPEP's review of ten patients' charts noted documentation concerns. An MC reviewed five patients' charts and noted that the vast majority of the physician's notes were templated and carried forward to the next note with few additions. The MC also observed that Dr. Kuntzelman prescribed Suboxone in split schedules, that the doses were above the maximum recommended dose, and that the licensee prescribed scheduled V controlled substances in violation of his Board Order.

Case number MD-19-0723A was initiated after CPEP's fifth chart review where two of the patients' charts were found to have failed to meet the generally acceptable standards. An MC reviewed the two charts and found deviations from the standard of care in relation to one patient and involved the lack of documentation of any urinary drug screens from July 2018 through January 2019. Case number MD-19-0954A was initiated after CPEP's sixth chart review where two out of the ten patients' charts reviewed were found to fail to meet the generally accepted standards. An MC reviewed the charts and found deviations from the standard of care as well as medical recordkeeping issues. Case number MD-20-0049A was initiated after CPEP's chart review found that one patient's chart failed to meet generally accepted standards. An MC reviewed the patient's chart and agreed with many of CPEP's concerns regarding Dr. Kuntzelman's care including deviations from the standard of care and recordkeeping issues.

Dr. Kuntzelman participated in the virtual meeting during the Committee's consideration of this matter, made statements and answered Committee members' questions. He asked the Committee for guidance and to specify their concerns, and stated that CPEP's chart reviews have been a financial burden. He also asked the Committee to consider reducing this requirement or termination it altogether, and stated his concerns that the reviews have been inconsistent.

Dr. Krahn stated that she found the physician engaged in unprofessional conduct in violation of A.R.S. § 32-1401(27)(e), (r) and (s) for reasons stated by SIRC.

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

**SECOND: Vice-Chairman Gillard**

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

Dr. Krahn stated her concerns regarding the physician's substandard care relative to controlled substances prescribing. She stated that this matter rises to the level of a Decree of Censure and spoke in favor of restricting the licensee from prescribing controlled substances.

**MOTION: Dr. Krahn moved for draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Five Year Probation with Practice Restriction. Dr. Kuntzelman shall be prohibited from prescribing controlled substances until receiving permission from the Board to do so. Once the licensee has complied with the terms of Probation, he must affirmatively petition the Board to request Probation termination.**

**SECOND: Chairman Farmer**

Chairman Farmer stated that this matter was extremely complex, and noted the physician's prior Board history. He spoke in favor of the Practice Restriction prohibiting the physician from prescribing controlled substances for the purposes of protecting the public. Dr. Krahn stated that there did appear to be progress made in the physician's practice, but was concerned regarding the physician's compliance going forward. Ms. Jones spoke in favor of the motion and stated that it is the Board's duty to protect the public. Dr. Bethancourt questioned whether an exception should be made to allow the physician to prescribe Suboxone. Dr. Krahn stated her concerns that Dr. Kuntzelman has not been able to demonstrate that he can appropriately prescribe Suboxone. The Board investigation also found that Dr. Kuntzelman failed to address issues involving patient drug screens that were positive for amphetamines. Dr. Krahn stated that she appreciated that the licensee was trying to help patients, but that she had concerns regarding his failure to direct patients to other sources that are part of a greater network that could meet the patients' needs. Dr. Krahn stated that she had fundamental concerns regarding the physician's medical treatment decisions and clinical judgment.

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

## **CONSENT AGENDA**

### **H. APPROVAL OF DRAFT FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

1. MD-18-0026A, JOHN W. MCGETTIGAN, M.D., LIC. #12606

Dr. McGettigan's Practice Monitor Dr. Jennifer Schneider, patient KA, and Attorney Susan Trujillo addressed the Board during the Public Statements portion of the teleconference.

AAG Smith summarized that this matter was considered by the Committee at its last meeting where the Committee voted for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) and (r) and for draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Three Year Probation with Practice Restriction and a number of terms and conditions. AAG Smith reported that subsequent to the Committee's meeting, Dr. McGettigan completed the CMEs required in the Board's Order and that the Board has received a progress update from the Practice Monitor. Committee members recognized that this matter was scheduled for the Committee's consideration as to the accuracy of the Order. Committee members also noted that if approved, the licensee has the right to petition for rehearing or review.

**MOTION: Dr. Krahn moved for the Board to approve the draft Findings of Fact, Conclusions of Law and Order for Decree of Censure and Three Year Probation with Practice Restriction. Dr. McGettigan shall be prohibited from accepting new patients who require controlled substance management of chronic pain conditions, increasing dosages of controlled substances prescribed to current patients in the State of Arizona pending completion of CME as required by this Order. Dr. McGettigan shall continue to have an approved practice monitor as previously ordered in the Board's ICA in this matter. Respondent shall agree to allow the monitor to view his interactions with any and all patients as deemed appropriate by the monitor. The monitor shall select the number of charts and**

patients for monitoring and review. The monitor shall provide written reports to the Board on a monthly basis or at any time the monitor has concerns regarding the physician's controlled substance prescribing or safety to practice. Respondent shall be responsible for all expenses relating to the practice monitor and preparation of the monthly reports. Dr. McGettigan may request termination of the Practice Restriction including the use of a practice monitor upon completion of intensive, in-person CME in medical recordkeeping and controlled substances prescribing. Within six months, complete CPEP's or PACE's 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 from the successful completion of the CME coursework, the physician shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews, at the physician's expense. The physician shall not request early termination of Probation without having completed the chart review process. After three consecutive favorable chart reviews, the physician may petition the Board for Probation termination. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board.

**SECOND:** Dr. Bethancourt

**VOTE:** The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.

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

**MOTION PASSED.**

2. MD-18-0599A, JAMES H. EVANS, M.D., LIC. #28668

**MOTION:** Vice-Chairman Gillard moved for the Board to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Ten Year Probation with Practice Restriction. The physician shall be prohibited from prescribing controlled substances, acting as a supervising physician, or engaging in solo practice until receiving permission from the Board to do so. Dr. Evans may request early termination of the controlled substance prescribing restriction upon completion of the controlled substance prescribing and ethics CME required by this Order; however, Dr. Evans may only be allowed to prescribe controlled substances in a hospital setting only for up to the full term of the Practice Restriction required by this Order. Dr. Evans shall not issue discharge prescriptions while the Practice Restriction is in effect. Within twelve months, complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding ethics; and, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. All CME hours completed in compliance with this Order shall be in addition to the hours required for license renewal. The physician's request for termination from the Practice Restriction shall include proof of completion of no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing completed within six months of the date of request for termination is made. Additionally, the physician shall provide proof of enrollment with a Board approved monitoring company to perform periodic chart reviews, at the physician's expense. After three consecutive favorable chart reviews, Dr. Evans may petition the Board to terminate the Probation. Dr. Evans shall not request early termination of Probation without having completed the chart review process. In the event that the physician requests Probation termination and the Practice Restriction is in effect at the time of the request, the Board may require any combination of examinations and/or evaluations in order to determine whether or not the physician is safe to prescribe controlled substances and the Board may continue the Practice Restriction and Probation or take any other action consistent with its authority. The Probation shall terminate except upon affirmative request of the physician and approval by the Board.

**SECOND:** Dr. Krahn

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**  
**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.**  
**MOTION PASSED.**

## **GENERAL BUSINESS**

### **I. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA**

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

### **J. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES**

Chairman Farmer stated that conducting these proceedings via the Zoom format has been very helpful, and stated his appreciation for Board staff's hard work and efforts to facilitate the Committee's meetings.

### **K. ADJOURNMENT**

**MOTION: Vice-Chairman Gillard moved for the Committee to adjourn.**

**SECOND: Dr. Krahn**

**VOTE: The following Committee members voted in favor of the motion: Chairman Farmer, Vice-Chair Gillard, Dr. Bethancourt, Ms. Jones, and Dr. Krahn.**

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

**MOTION PASSED.**

The Committee's meeting adjourned at 11:09 a.m.



  
Patricia E. McSorley, Executive Director