



## Arizona Medical Board

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### FINAL MINUTES FOR ADMINISTRATIVE JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING

Held on Tuesday, March 9, 2021

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

#### *Committee Members*

Jodi A. Bain, M.A., J.D., LL.M., Chair

R. Screven Farmer, M.D.

Pamela E. Jones

Lois E. Krahn, M.D.

### GENERAL BUSINESS

#### A. CALL TO ORDER

Chairwoman Bain's called the Committee meeting to order at 4:04 p.m.

#### B. ROLL CALL

The following Committee members participated telephonically: Chairwoman Bain, Dr. Farmer, Ms. Jones and Dr. Krahn.

#### ALSO PRESENT

The following Board staff participated in the virtual meeting: Patricia McSorley, Executive Director; Kristina Fredericksen, Deputy Director; Carrie Smith, Assistant Attorney General (AAG); Evangeline Webster, Human Resources; and Michelle Robles, Board Operations Manager.

#### C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

No individuals addressed the Committee during the Public Statements.

#### D. APPROVAL OF MINUTES

- October 22, 2020 Administrative Joint Legislative and Rules Committee

**MOTION:** Dr. Krahn moved to approve the October 22, 2020 Administrative Joint Legislation and Rule Committee.

**SECOND:** Ms. Jones.

**VOTE:** The following Board members voted in favor of the motion: Chairwoman Bain, Dr. Farmer, Ms. Jones and Dr. Krahn.

**VOTE:** 4-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

**MOTION PASSED.**

#### E. UPDATE ON RULES

Ms. McSorley provided an update on the rulemaking process. All the five year reviews are completed and are currently open for public comment until March 15<sup>th</sup>. When the public comment period ends the committee will need to meet again to discuss the comments and possible take them to the Board. There are currently three public comments that have been submitted. One request is to cap the review of malpractice claims at ten years. Another comment was to look back at dismissed cases as there may be a pattern of misconduct. The final comment was that notations should be made for dispensing of controlled substance into the record. Ms. McSorley noted this last suggestion is already a requirement. The Board would need to decide if they would

like to adopt the recommendations. Ms. McSorley reported that one of the new requirements of the Governor's Executive Order is that they must be submitted to the Governor's office for approval before they can be filed with the Secretary of State. The intention of the Executive Order is that no unnecessary rules are being put forward to inhibit business or put unnecessary barriers. This Executive Order allows the executive branch an opportunity to review the agencies' rules before going forward. Ms. McSorley reported that the next five year review is not due until January 23rd. Ms. McSorley confirmed that the staff will be looking at rules to see what needs to be adopted post five year review report. Ms. McSorley confirmed that Articles 2, 3 and 6 are the rules that will be looked at for possible adjustment in calendar year 2021.

#### **F. LEGISLATIVE UPDATE ON HB 2454 (TELEHEALTH) AND SB 1271 (PERMIT FOR MEDICAL SCHOOL GRADUATES NOT MATCHED WITH RESIDENCY PROGRAM)**

Ms. Mcsorley reported that HB 2454 is the telehealth bill that will expand the ability to practice telemedicine. This will require the agency to take action once this bill passes. Ms. Mcsorley opined it will pass based on the bill's support and the amount of work that stakeholders have done on it. Ms. McSorley informed the Committee that she and Dr. Farmer met with the Governor's office to discuss the requirements for registration. The discussion addressed the addition of interstate providers and the registration process for telehealth that the Agency will be required to enforce. Ms. McSorley reviewed the requirements for registration.

Dr. Krahn inquired about the physician only being able to treat on 10 occasions before seeking licensure.

Ms. Mcsorley commented that it is her understanding that it's 10 occasions within the year but will obtain clarification for the Committee.

Dr. Farmer commented that he did not think there was a numerical limit. Dr. Farmer noted that the language includes the physician may have no disciplinary action and may limit the Board's ability to grant a registration at their discretion.

Ms. Mcsorley noted that the compact license allows no disciplinary history and the intention may have been to mirror this requirement. Ms. McSorley commented that the bill does have a great deal of support including by ARMA and hospitals.

Ms. Jones inquired how a patient would know that the physician is licensed in another state but is registered for telemedicine.

Ms. Mcsorley reported that the Board does put lists on the website for those who hold specialized licenses in Arizona; however given the structure of telemedicine, the patient may have a discussion with the physician when setting up the appointment. Ms. Mcsorley commented that the bill will require future revisions.

Ms. Mcsorley read the language from the bill states that the services are provided under one of the following circumstances: "The healthcare provides fewer than ten telehealth encounters with a calendar year". Ms. Jones inquired if the Board still has disciplinary options in the event a patient files a complaint under this registration.

Ms. McSorley confirmed that the language intends to allow the Board the ability to investigate, rehabilitate and issue discipline. If the Board takes discipline against the registration it is reportable to the NPDB. It's discipline on the registration instead of a license. Ms. McSorley reported that this new process will require staff to obtain a declaration from the physician's insurance provider which is different than the Board's normal licensing process.

Dr. Krahn confirmed that if the Board issues discipline the registration could be revoked and the physician's practice in Arizona would cease.

Ms. Bain inquired if the Board has the resources to a put towards this registration once it becomes law.

Ms. McSorley reported that the Board has a pending package to appropriate funds from the reserve which will assist with this increased expenditures in terms of staffing. Ms. McSorley noted that the temporary emergency license also created a great deal of work for Board staff. These two bills will require the Board to act affirmatively which does add a financial burden.

Ms. Bain requested statistics on the difference between last year and this year's work increase.

Ms. McSorley informed the Committee of SB 1271 which will create a new transitional training permit. The opposition towards this bill revolves around the issue that it does not create more residency spots. It will create a potential alternative pathway for a physician who has not matched. It will require the Board to register the physician but the supervision will rest with one physician who works for an entity. The goal is to get physicians in places who are hard pressed to obtain providers.

## **G. UPDATE AND REVIEW OF BUDGET**

Ms. McSorley reported that at the seven month mark the Board has spent 55 percent of the budget. Ms. McSorley noted that rent was paid in July. There were vacancy savings and travel expense savings this year but these were offset by increased expenses related to IT and getting employees situated to work from home. Ms. McSorley commented that there are a few variable expenses which include the use of ASURE which could fluctuate.

Ms. Bain inquired if the Board doesn't obtain the appropriation is there room in the current budget to address the increase workload.

Ms. McSorley commented that there will be areas in the budget that would need to be looked at and hard choices may need to be made. Ms. McSorley noted that the reasoning and numbers for the appropriation are rational and logical. Ms. McSorley opined she is optimistic that the appropriation will be granted. The appropriation comes from the budget proposal as you cannot use all the funds in the reserve and the Board cannot ask for more funds than expected to receive. The reserve fund is currently at 8.5 million dollars.

Ms. Bain commented that asking for 400,000 appropriation is not 20 percent of the reserve and also opined that the request should be granted.

Ms. Jones inquired about hoteling and if the Board's rent would be affected.

Ms. McSorley reported that she sits on a hoteling committee and no final answer has been given yet regarding a reduction of the rent.

Dr. Krahn commented that issue is that the State may find itself with a surplus of space as many agencies may be going in this direction.

Ms. McSorley confirmed the Board's building is a State owned building however some agency buildings are rented from private landlords. This is a complicated issue that will need to be resolved by the State. Ms. Fredericksen informed that she sits on two committees, teleworking general policy and telework equipment, and there is no answer at this time. Ms. McSorley noted that the Board is one of the larger agencies are one of the higher rent paying agencies in this building.

Ms. Bain inquired if overall is the Board under budget.

Ms. McSorley confirmed that at this point the Board is somewhat under budget but noted that there are some additional expenses coming up. In 2020 were a little under budget and returned money to the reserve. This saving was due to vacancies and the ERE. These are the Board's biggest expense and the biggest indicator of needing additional money or saving money.

## **H. DISCUSSION OF STAFFING ISSUES AND BOARD PROCESSES**

Ms. McSorley reported that the biggest challenge is adequately trained staffing for licensing. She noted that the Board is about to enter into a busy season with physicians graduating from their post graduate training and dispensing licenses also become due at the end of June. With the inclusion of the temporary emergency license this is a very busy time. Ms. McSorley noted that two temporary staff employees have been hired and the Board is interviewing for two more. Ms. McSorley reported that she segregated the licenses in the Committee's chart to see the difference from the normal workload and the increased temporary license workload. Ms. McSorley noted that staff is trying to meet all the immediate needs of hospitals for additional providers with the temporary license.

## **I. DISCUSSION RELATED TO FUTURE BOARD TRAINING TOPICS AND FORMAT**

Ms. Bain acknowledged Ms. Smith's incredible job of training Board members and staff.

Ms. McSorley requested suggestions for what training should we look at for the upcoming months and how should it be conducted.

Ms. Bain suggested training on formal vs. informal hearings and when something does or does not get referred to the Office of Administrative Hearings.

Dr. Krahn suggested training on the telehealth bill, even if not passed yet, so that the Board can be prepared as much as possible. Dr. Krahn requested that this topic be placed on the April meeting and to understand how it differs from a true license. Ms. Bain requested that the training be held in August or December. Ms. Jones suggested a review of open meeting laws and reportable criminal charges.

Ms. Smith informed the Committee that reportable criminal charges is a topic that has already been discussed and a training is being worked on. Ms. Smith is working in conjunction with Mr. Williams, an attorney who works in the AGO Healthcare Fraud and Abuse section regarding the training.

Ms. McSorley inquired about whether or not this training should be a full day and separate from the regularly scheduled Board meetings or a mixture.

Dr. Krahn opined that taking an extra day will not be supported but suggested extending an already scheduled day. Ms. Jones opined that a full day allows for a more in depth training but understands the benefits of extending a day.

Ms. McSorley commented that she prefers in person training however many of the staff is not vaccinated and that raises a problem. State employees are being offered the vaccine by the proposed DHS age groups.

## **J. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING THE PROVISIONS OF EXECUTIVE DIRECTOR ORDER 2021-02: MORATORIUM ON RULEMAKING TO PROMOTE JOB CREATION AND ECONOMIC DEVELOPMENT; INTERNAL REVIEW OF ADMINISTRATIVE RULES**

Ms. McSorley reported that the Executive Order asks for the Board to review all the rules that were suspended during the State of Emergency to determine if those rules should be permanently suspended and report their findings no later than June 1, 2021. The Board did not suspend any rules but gutted two statutes to create the Temporary Emergency License. There are no statutes or rules for the Board to permanently waive.

Ms. Bain commented that this is not applicable since the issue did not arise.

Ms. McSorley commented that the Committee can direct her to submit a courtesy letter that nothing applies for reporting purposes.

**MOTION: Dr. Krahn moved to direct staff to issue a response as requested by the Governor's Executive Order indicating that no rules were waived.**

**SECOND: Ms. Jones**

**VOTE: The following Board members voted in favor of the motion: Chairwoman Bain, Ms. Jones and Dr. Krahn. The following Committee member was absent: Dr. Farmer.**

**VOTE: 3-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

Ms. McSorley informed the Committee that there were other requirements to permanently display on the website regarding the Universal Application, Temporary Emergency License and Fee Waivers. Board staff will be rearranging the website to comply with the Executive order.

Ms. McSorley requested another Committee meeting when the public comment period closes for the Rules to be scheduled in early May.

## **K. ADJOURNMENT**

**MOTION: Ms. Jones moved for adjournment.**

**SECOND: Dr. Krahn.**

**VOTE: The following Board members voted in favor of the motion: Chairwoman Bain, Ms. Jones and Dr. Krahn.**

**The following Committee member was absent: Dr. Farmer.**

**VOTE: 3-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

The Board's meeting adjourned at 5:15 p.m.



  
Patricia E. McSorley, Executive Director