



Arizona Medical Board

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FINAL MINUTES FOR TELECONFERENCE MEETING

Held via ZOOM on Wednesday, April 7, 2021
1740 W. Adams St., Board Room A • 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
Lois E. Krahn, 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.
Laura Dorrell, M.S.N., R.N.
Gary R. Figge, M.D.
Pamela E. Jones
Eileen M. Oswald

GENERAL BUSINESS

A. CALL TO ORDER

Chairman Farmer called the virtual meeting to order at 8:04 a.m.

B. ROLL CALL

The following Board members participated in the virtual meeting: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.

ALSO PRESENT

The following Board staff and Assistant Attorney(s) General participated in the virtual meeting: Patricia McSorley, Executive Director; Kristina Fredericksen, Deputy Director; Carrie Smith, Assistant Attorney General ("AAG"); Raquel Rivera, Investigations Manager; William Wolf, M.D., Chief Medical Consultant; Michelle Robles, Board Operations Manager; and, Andrea Cisneros, Minutes Administrator.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

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

LEGAL MATTERS

D. FORMAL INTERVIEWS

1. THIS CASE WAS PULLED FROM THE AGENDA.

E. FORMAL LICENSING INTERVIEWS

1. MD-20-0697A, STANLEY E. OKOSUN, M.D., LIC. #N/A

Dr. Okosun and Attorney Paul Giancola participated in the virtual meeting during the Board's consideration of this matter, made statements and answered Board members' questions. Board staff summarized that Dr. Okosun disclosed restriction of clinical privileges that occurred in 2019 and 2020, action taken by the Nebraska Board and

malpractice cases on his Arizona license application. The Chief and Outside Medical Consultants reviewed the malpractice cases and determined that further specialty consultant review was not required. Board staff reported that Dr. Okosun applied for an Arizona temporary emergency license, did not answer affirmatively to the background questions on the application, and was informed that he did not qualify for a temporary emergency license.

Dr. Okosun reported that he currently holds an active unrestricted medical license in Nebraska, and stated that the documentation and letters of support submitted in this case demonstrate that he has a history of providing excellent patient care and exercising good medical judgment. Dr. Okosun addressed the concerns raised in the matters involving restriction of his clinical privileges and reported that he withdrew his application to renew his hospital privileges in April 2020 during the course of the hospital's investigation in Nebraska. Dr. Okosun stated that he has learned from these experiences and looks forward to providing services to patients and colleagues in Tucson, Arizona.

Mr. Giancola stated that Dr. Okosun resigned from the hospital during the course of their investigation when he realized that their medical consultant report was already obtained and never provided to Dr. Okosun. He stated that the Medical Executive Committee's medical consultant report did not show anything egregious with regard to patient care and that whether or not a CT scan should have been obtained was a controversial issue in the case. Mr. Giancola stated that Dr. Okosun's error in that case was his failure to document that the patient left against medical advice rather than discharged. He stated that the Nebraska Board was previously informed of both the performance improvement plan and head trauma cases through reports from the NPDB, and had elected to not initiate investigations. Mr. Giancola encouraged the Board to consider the letters of support submitted in this case and grant Dr. Okosun an unrestricted Arizona license.

Dr. Figge questioned Dr. Okosun as to whether he had considered returning to Nebraska to complete the hospital investigation. Dr. Okosun explained that he voluntarily restricted his hospital privileges to allow for the investigation to be undertaken, and that through that process it became evident that the medical staff was not following rules and regulations and he felt that he was not receiving honest feedback from the review committee. Ms. Dorrell recognized he had completed a number of CME and attended leadership classes, and questioned the applicant as to how his practice has changed since the Nebraska Board's action issued in 2014 concerning his behavior at work. Dr. Okosun stated that he completed a program that has helped him learn about his communication with others.

In his closing comments, Mr. Giancola pointed out that Dr. Okosun will be subjected to the extensive credentialing process to obtain hospital privileges in Arizona after receiving a license, and he asked the Board to find that the physician is well qualified and meets the qualifications for an unrestricted Arizona license. During the Board's deliberations, Dr. Figge noted that Dr. Okosun will be required to undergo the vetting process for credentialing given that he is trained in and practices trauma surgery. He observed that the Nevada Board's action occurred seven years ago, and that the physician has engaged in remedial efforts since that time. Dr. Figge spoke in favor of granting the license based on the letters of support submitted in this case and the unrestricted Nebraska license.

MOTION: Dr. Figge moved for the Board to grant the license.
SECOND: Dr. Bethancourt

Vice-Chairman Gillard spoke in favor of the motion and recognized the extensive process involved in obtaining hospital credentials.

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Ms. Dorrell,

Dr. Figge, Ms. Jones and Ms. Oswald. The following Board member was absent: Dr. Beyer.

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

MOTION PASSED.

F. FORMAL INTERVIEWS

1. MD-20-0331A, ROHIT DWIVEDI, M.D., LIC. #30335

Dr. Dwivedi and Attorney Andrew Plattner participated in the virtual meeting during the Board's consideration of this matter, made statements and responded to Board members' questions.

Board staff summarized that the complaint alleged Dr. Dwivedi inappropriately accessed personal patient information from his former employer, Arizona Endocrinology Center ("AEC"), prior to departing from the practice and provided it to his new employer to contact patients. During the course of the investigation, AEC provided Board staff with a copy of files found on Dr. Dwivedi's laptop, which included information relating to over seven thousand patients. Board staff noted that Dr. Dwivedi entered into agreements with AEC during his employment which outlined that the patient records were the property of the practice; that he agreed to only access confidential patient information relating to individuals with whom he had a treating relationship; and that he was not to save any confidential information to portable media devices. AEC reported that thirteen patients of the practice who did not have a provider/patient relationship with Dr. Dwivedi received texts regarding his new employer, and the same text message went to a number of AEC's test accounts.

Dr. Dwivedi stated that he had been at AEC for 17 years and knew how difficult it was for physicians leaving the practice to obtain their patient information. Dr. Dwivedi admitted that he made a mistake with no ill intention, that he has obtained continuing education hours and was willing to complete more to the Board's satisfaction. He stated that this matter related to disclosure of information and is not a reflection of him as a physician. Mr. Plattner stated that Dr. Dwivedi understood that his conduct was improper, that he did not intend to take as many files as alleged and did not intend to distribute, communicate or disclose personal health information to parties that are not his patients. Mr. Plattner reported that Dr. Dwivedi has completed CME relating to HIPAA and has signed up to complete additional CME, and asked the Board to consider issuing a non-disciplinary sanction to resolve this matter.

Ms. Jones questioned the licensee regarding his previous employment with AEC. Dr. Dwivedi reported that he joined AEC in 2002, became a partner in 2005, and then gave his thirty-day notice when he resigned. Dr. Dwivedi explained that he only intended to download information relating to his patients in order to contact them regarding his new practice, and reiterated that he knew physicians had difficulty accessing their patients' information after departing from the practice. Dr. Dwivedi also reiterated that there was no ill intention, and assured the Board that he has learned from this and that it will not happen again.

MOTION: Ms. Jones moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Ms. Bain

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald. The following Board member was absent: Dr. Beyer.

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

MOTION PASSED.

The Board entered into Executive Session at 9:09 a.m.

The Board returned to Open Session at 9:35 a.m.

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

Dr. Figge observed that Dr. Dwivedi had an opportunity to inform his patients of his plans to leave the practice, noting that Dr. Dwivedi notified a number of his patients that he was leaving the practice and provided letters several of his patients. Dr. Bethancourt questioned whether the licensee instructed his former employer to notify his patients. Dr. Dwivedi confirmed and stated that AEC failed to do so, and that he elected to utilize the third party texting service.

During closing comments, Dr. Dwivedi stated that he wished he could have done things differently, reiterated that other physicians have had issues with accessing their patient information after departing from the practice, and stated that he was willing to complete additional CME. Dr. Dwivedi also reported that the majority of his patients at AEC have followed him to his new practice. Mr. Plattner thanked the Board for considering today's discussion as well as all communications in the file.

Ms. Jones thanked the physician for appearing before the Board and stated that hearing today's testimony was helpful for her review of the case. Ms. Jones found that the physician engaged in unprofessional conduct in this case.

MOTION: Ms. Jones moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a), (b) and (kk) for reasons as stated by SIRC.

SECOND: Chairman Farmer

Vice-Chairman Gillard questioned whether a violation of A.R.S. § 32-1401(27)(a) was substantiated in this case, and spoke in favor of sustaining violations of A.R.S. § 12-2292(A) and A.R.S. § 32-1401(27)(b) and (kk). AAG Smith clarified that finding a violation of A.R.S. § 12-2292(A) requires finding a violation of A.R.S. § 32-1401(27)(a) since that is the provision that references violating statutes governing the practice of medicine such as § 12-2292(A).

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald. The following Board member was absent: Dr. Beyer.

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

MOTION PASSED.

Ms. Jones stated she found this matter rises to the level of discipline and spoke in support of adopting SIRC's recommendation for a Letter of Reprimand and Probation to complete CME in ethics.

MOTION: Ms. Jones moved for draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation. Within six months, Dr. Dwivedi shall complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding ethics. The CME hours shall be in addition to the hours required for license renewal. The Probation shall terminate upon proof of successful completion of the CME coursework.

SECOND: Ms. Bain

Dr. Bethancourt spoke against the motion and stated it appeared the physician's intention was to promote continuity of care for his patients. Vice-Chairman Gillard agreed with Dr. Bethancourt's comments and stated that there were mitigating circumstances identified in this case. He spoke against the motion and stated that while he believed that CME was warranted in this case, he did not find that this matter rises to the level of discipline. Dr. Krahn stated she believed the intention was to provide continuity of care. She recognized that Dr. Dwivedi practiced at AEC for an extended period of time with many patients that had chronic diseases. Dr. Krahn stated that she did not find this matter rises to the level of discipline.

Dr. Figge stated he agreed the physician's intentions were to continue care for his patients, but that he had concerns regarding how he went about it in this case. Dr. Figge stated that he found the case rises to the level of disciplinary action given that Dr. Dwivedi was a managing partner and was aware of these concerns in the practice while he was a managing partner and had time to inform his patients of his resignation and new employment information prior to his departure. Dr. Figge questioned whether the licensee fully accepted responsibility for what occurred in this case, noting the physician's prior correspondences with Board staff and his testimony today. Ms. Bain questioned whether the Board had the ability to issue CME without placing the license on probation. AAG Smith clarified that in the event the Board determines the case rises to discipline and CME is warranted, probation is required to monitor for compliance.

Ms. Jones spoke in favor of the motion and stated she found that a serious violation occurred in this case. Chairman Farmer noted that this was a complicated case and stated his concerns regarding the physician's initial denial of the problem. Ms. Oswald spoke in favor of the motion and stated that protecting the patients' confidential health information is tantamount to protecting the public. Ms. Dorrell stated she found that this matter rises to the level of discipline and spoke in favor of the motion. She stated that downloading personal health information onto a jump drive and using in the manner with which Dr. Dwivedi did in this case can be detrimental to the public.

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Ms. Bain, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald. The following Board members voted against the motion: Vice-Chairman Gillard, Dr. Krahn and Dr. Bethancourt. The following Board member abstained: Dr. Beyer.

VOTE: 6-yay, 3-nay, 1-abstain, 0-recuse, 0-absent.

MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-19-0686A, MARK I. ROBERTS, M.D., LIC. #45322

Dr. Roberts participated in the virtual meeting during the Board's consideration of this matter, made statements and answered Board members' questions.

Board staff summarized that this case was initiated after receiving a self-report from Dr. Roberts. During the course of the Board's investigation, Dr. Roberts entered into an Interim Consent Agreement ("ICA") for Practice Limitation after undergoing an assessment which recommended refraining from direct patient care and limiting his work hours. Dr. Roberts subsequently underwent a Board-approved evaluation where it was determined that he was safe to return to direct patient care with recommendations for graduated and supervised return to full practice contingent upon evaluations to rule out potential deficits in light of his health condition. Dr. Roberts entered into an amended ICA for Practice Limitation in April 2020 that incorporated the increase in his work hours as well as other recommendations made by the evaluator and the requirement to enroll in the Physician Health Program ("PHP") for monitoring. Board staff further reported that reports were received that indicated Dr. Roberts continued to supervise Physician Assistants ("PAs") during the time that his license was subject to the Interim Practice Limitation and failed to maintain annually updated Delegation Agreements.

Dr. Roberts asked the Board to allow him to return to full active practice without restriction or limitation, and that the period of Probation recommended by staff be shortened due to the associated costs and requirements that are difficult to adhere to at times given his condition. In response to Dr. Krahn's questioning, Dr. Roberts reported that he has not consumed alcohol since January 2019 and that he has no desire to do so. He explained that he misinterpreted Board staff's request for Delegation Agreements and has since submitted the current forms to correct the error. Dr. Roberts summarized what he believed were the responsibilities of a Supervising Physician as well as the nature and type of issues/questions he would often encounter with his PAs. Dr. Roberts confirmed that he is currently not supervising any PAs. In his closing comments, Dr. Roberts asked the Board to review and consider his email to staff that addressed the concerns raised in

this case. He stated that he has tried his best to put the past behind him and move forward.

During the Board's deliberations, Dr. Krahn stated that she found the physician engaged in unprofessional conduct in this case for the reasons as stated by SIRC, with the exception of the allegation that the physician failed to maintain annually updated Delegation Agreements.

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

SECOND: Ms. Bain

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.

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

MOTION PASSED.

MOTION: Dr. Krahn moved for the Board to issue an Advisory Letter for supervising Physician Assistants while on an Interim Practice Limitation, and terminate the current Interim Practice Limitation. 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: Vice-Chairman Gillard

Dr. Beyer spoke in support of the motion, noted that the license is currently subject to an Interim Practice Limitation and questioned how to address the PHP component in this case. Dr. Krahn stated that she was impressed with the physician's current status with respect to his underlying condition. AAG Smith clarified that Dr. Roberts license is currently subject to the Interim Practice Limitation that became effective April 2020 that requires enrollment in PHP for monitoring. She stated that the Board had the authority to enter into a confidential agreement with the licensee to allow for continued PHP monitoring if the Board determines that the case does not rise to the level of disciplinary sanction. Dr. Krahn stated that this matter does not rise to the level of discipline and proposed a two year confidential monitoring agreement retroactive to the effective date of the amended Interim Practice Limitation in April 2020.

Vice-Chairman Gillard questioned whether further monitoring was warranted. He stated that the physician appeared to be well aware of the underlying problems, and that he found this case does not rise to the level of discipline. Vice-Chairman Gillard spoke in favor of the motion to issue an Advisory Letter only, and recognized this matter stemmed from a self-report and did not involve patient harm. Dr. Figge spoke in favor of the motion and stated that an Advisory Letter was warranted without further monitoring given the date of sobriety and time that has passed. Dr. Bethancourt spoke in favor of the motion. Chairman Farmer stated that he was very impressed with the licensee's sincerity and self-awareness that has been demonstrated today.

The Board recognized the remediation efforts of the licensee that have mitigated the need for discipline in this case, and discussed terminating the current Interim Practice Limitation in addition to issuing an Advisory Letter to resolve this matter without further monitoring.

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.

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

MOTION PASSED.

H. GENERAL CALL TO THE PUBLIC

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

I. ADJOURNMENT

MOTION: Dr. Krahn moved for the Board to adjourn.

SECOND: Ms. Jones

VOTE: The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.

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

MOTION PASSED.

The Board's virtual meeting adjourned at 10:41 a.m.



Patricia E. McSorley
Patricia E. McSorley, Executive Director