



## Arizona Medical Board

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### FINAL MINUTES FOR TELECONFERENCE MEETING Held on Thursday, June 10, 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 Board's meeting to order at 11:51 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**

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

##### **D. EXECUTIVE DIRECTOR'S REPORT**

- Legislative Update, including but not limited to:
  - HB 2454 - Telehealth; health care providers; requirements  
Executive Director McSorley reported that the Telehealth Bill has passed and included an emergency clause that made it effective immediately. She informed the Board that staff is currently working on the application for the registration and establishing a fee schedule that will be discussed and considered under Agenda Item No. L.

- SB1271 – Medical graduate transitional training permits

Executive Director McSorley reported that staff is also working on registration for medical graduate transitional training permits for graduates who failed to match in residency program and is renewable for up to three years on an annual basis. She also reported that the Attorney General's Office will be providing a legal analysis of other legislative matters that will impact the Board.

## **E. CHAIR'S REPORT**

Chairman Farmer thanked the Board members and staff for doing a commendable job and stated his appreciation for their dedication and hard work.

## **F. LEGAL ADVISOR'S REPORT**

## **G. DISCUSSION REGARDING DEBRIEFING ON BOARD PROCESSES**

Chairman Farmer stated that he has found this meeting format to work extremely well for these discussion topics. Ms. Jones thanked the staff for their excellent presentations. Ms. Oswald stated that this training session has been very helpful and that the format was perfect. She stated her appreciation for the presentation slides and stated that she endorsed further education in this format. Dr. Bethancourt stated that the education was excellent and that he would like to see more of it. Dr. Krahn stated that today's session was absolutely stellar and that she found to be one of the most effective Board training session in which she has participated.

## **H. BOARD MEMBER TRAINING**

AAG Smith provided an educational presentation to the Board regarding the roles and responsibilities of a Supervising Physician ("SP").

Dr. Krahn thanked AAG Smith for her presentation and stated that it was extremely helpful. She noted that the Board has disciplined physicians in the past for failing to have an annually updated Delegation Agreement. She proposed the Board publish on its website a document that summarizes the key point for SPs to be aware of when serving in their role as a supervisor.

Ms. Jones asked for clarification regarding collaborating physicians and noted that these physicians do not appear in the Delegation Agreement. AAG Smith explained that collaborating physicians is a new term of art that is being used by the PA community, while SP is the statutory term which establishes the legal relationship necessary for a PA to initiate and continue practicing. In response to further questioning by Board members, AAG Smith clarified that statute does not require SPs to sign off on all the PA's work and are not required to document weekly meetings. AAG Smith stated that maintaining an annually updated Delegation Agreement has been a requirement for a long time. Dr. Bethancourt asked AAG Smith if she would be willing to share her presentation for educational purposes, to which she agreed. Chairman Farmer thanked AAG Smith for her presentation which he stated was very helpful and concise.

## **I. BOARD MEMBER TRAINING REGARDING PHYSICIAN SEXUAL MISCONDUCT: REPORT AND RECOMMENDATIONS FROM THE FSMB WORKGROUP**

AW addressed the Board during the Public Statements portion of the virtual meeting.

Ms. Rivera provided an educational presentation regarding how the Board addresses physician sexual misconduct, specifically reviewing the FSMB's new sexual misconduct work group recommendations. She also provided the Board with an overview of the complaint and investigation processes regarding sexual misconduct allegations.

In response to Ms. Jones' questioning, Ms. Rivera reported that it is difficult to place a percentage on the number of cases that go unreported due to lack of reporting, she emphasized the importance of documentation and stated that the use of a chaperone when performing intimate examinations can be very mitigating in most cases. Ms. Rivera also stated that medical schools

need to focus more on this topic in addition to physician burnout that may lead to an individual being more inclined to commit unprofessional conduct.

Dr. Krahn thanked Ms. Rivera for a superb presentation and stated that the Board is fortunate to have the FSMB's impressive report, which she found to be very helpful. She emphasized the importance to disseminate these presentations to medical schools as well as other professional schools. She stated that there needs to be a broad understanding of what is inappropriate, especially in grooming-type behaviors. Dr. Krahn commented that there are times where an individual may witness these things and need to know when to come forward especially sexual misconduct in the workforce. Dr. Krahn also stated her concerns regarding an individual engaging in misconduct in the absence of psychiatric diagnoses and stated that there is more potential for rehabilitation when there is a psychiatric diagnosis present. She stated that in absence of a psychiatric diagnosis, this may truly be an individual who has extremely poor judgment, very entitled behaviors and is less likely to be successfully rehabilitated and need a closer look. Ms. Rivera stated that she was comfortable with the barriers of protection that facilities and the Board are utilizing to ensure safe practice.

Ms. Bain applauded Ms. Rivera for her amazing presentation, stated that the information was very helpful and requested that a copy of her presentation be disseminated among the Board members to which Ms. Rivera agreed. Ms. Rivera also reported that she would schedule additional training with Justice 3D in a virtual format and invited the Board members to attend. Chairman Farmer recalled the comments made during the Public Statements and Ms. Rivera confirmed that she took note of those comments. Dr. Krahn stated that the Board needs to help patients understand what behavior is inappropriate and should do so thoughtfully. She stated that one reason that these situations take place is due to the patients trusting their physician and assuming that the behavior is okay. Dr. Krahn stated that helping patients recognize when they have been victimized is an important service.

Dr. Bethancourt thanked Ms. Rivera for a great presentation. He recalled a recent situation that involved a male against whom accusations were filed and it was determined that the allegations were unfounded. Dr. Bethancourt stated that this particular male provider was devastated by the accusation and that it will forever change how that individual conducts himself. Dr. Bethancourt commented that there are two sides to the coin and that that such accusations can be devastating to an innocent individual.

## **J. REPORT AND RECOMMENDATION FROM THE AD HOC COMMITTEE REGARDING UPCOMING BOARD MEETING FORMATS**

Dr. Bethancourt reported on the Committee's May 3<sup>rd</sup> meeting wherein discussion occurred regarding upcoming meeting formats for the Board to consider. He stated that the Committee recommended continuing the current format of utilizing Zoom for Formal Interviews, a teleconference the following day to address other matters and evening teleconferences for the months in between the Board's regular session meetings until the end of the year. He stated the Committee recognized the Board will need to work on the logistics of returning to in-person sessions with social distancing. Dr. Bethancourt stated that the Committee suggested that once in-person sessions begin, the Board should meet in-person on the first day to conduct Formal Interviews and meet telephonically the following day to address other matters.

Ms. Oswald spoke in support of returning to in-person meetings when appropriate from a medical and social distancing perspective. She stated that the alternative formats currently utilized by the Board has been very successful. Dr. Krahn stated that the Committee's proposal was an attempt to add one more layer to the hybrid meeting format arrangement. Chairman Farmer thanked the Committee members for their input and recommendations. He noted the number of complicating factors that are involved in the return to in-person session including accommodations for the public with safe social distancing. Ms. Bain stated her appreciation for the Committee's review and consideration of the Board's options. She commented that members who travel for in-person sessions may need to participate in the second day's teleconference from their hotel room if the meetings are back-to-back. Chairman Farmer pointed out that the meetings do not need to be held back-to-back and can be spread out to accommodate Board members' schedules.

Ms. Jones recalled that the Board used to meet every other month and that the teleconferences held in between the regular sessions were for emergencies. Chairman Farmer clarified that the bimonthly regular sessions were becoming lengthy and that the convening of off-month teleconferences have also been used to timely address licensing matters. Ms. Jones stated the disadvantages of conducting Formal Interviews telephonically and questioned whether the off-month teleconferences could be held via Zoom. Chairman Farmer stated that the consensus of the Board was to conduct all Formal Interviews via Zoom and potentially hold summary action meetings via Zoom as well. He stated that due to the number of individuals that participate in the Board's teleconferences, Board staff has recommended the Board continue to utilize the telephonic format for the off-month meetings.

Ms. Robles confirmed that Formal Interviews will be held via Zoom until the Board returns to in-person session and explained to the Board the logistical difficulties with conducting Call to the Public via teleconference versus Zoom. Dr. Beyer stated that he missed having the ability to see the individuals addressing the Board during the Call to the Public. Chairman Farmer stated that Call to the Public is a very important part of the Board's meetings and recognized that staff continues to review the different options available for facilitating the meetings. Ms. Jones commented on the advantages of having the ability to see the individual addressing the Board and stated that she recalled in the past that Call to the Public speakers at times presented with exhibits that Ms. Jones stated she believed were very impactful to the Board at that time.

Chairman Farmer stated that he anticipated the Board potentially returning to in-person sessions around January of 2022, he recognized the Board members' comments and thoughts on the different meeting formats and stated that the Board may benefit from holding its training sessions via Zoom. Dr. Krahn stated that the Board has been presented with the opportunity to improve upon making it as accessible as possible to patients and licensees who reside outside of the urban centers. She spoke in support of the Board's continual use of these alternative meeting formats to conduct business. She stated her appreciation for the use of Zoom and improvements in technology that have made the Board more available to every in the State.

## **K. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SETTING OF REGISTRATION FEE FOR INTERSTATE TELEHEALTH PRACTICE**

Executive Director McSorley reported that the Board's Administrative Joint Legislation and Rules Committee ("JLRC") met on June 9<sup>th</sup> and discussed establishing a fee schedule for initial and renewal telehealth registration applications. She explained that registration is required for out of state physicians who perform more than nine patient encounters. She reported that the Board is exempt from rulemaking for one year and clarified that the Board can revisit the fee schedule as it progresses through the rulemaking process later.

Executive Director McSorley reported that the JLRC recommended approving the proposed fee schedule of \$500 for initial registration application and \$250 for annual registration renewal. She clarified that the application review process will be similar to that of regular licensure with some exceptions. Ms. Bain stated that after extensive discussion, the Committee found that the proposed fee schedule was appropriate at this time and also recommended revisiting this topic at a later time to determine whether any fee adjustments are needed. Dr. Krahn commented that the Committee discussed establishing a fee schedule similar to regular licensure so as to not incentivize providers to obtain registration versus licensure.

Dr. Beyer questioned how the providers will be tracking the number of telehealth encounters. Executive Director McSorley reported that a committee is currently being formed to address this concern and confirmed that registrants are expected to keep track of this number pursuant to statute. Dr. Figge stated that one point highlighted during the JLRC's discussion related to the annual renewal cycle that will result in extra work for both the registrant and Board staff, and that the Committee recommended revising the fee schedule after the process has been implemented for a period of time.

**MOTION: Ms. Jones moved for the Board to approve the proposed telehealth registration fee schedule of \$500 for initial registration and \$250 for annual registration renewal.**

**SECOND: Dr. Bethancourt**

**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.**

## **L. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING MODIFICATION TO THE CONFIDENTIAL HEALTH QUESTIONS ON INITIAL AND RENEWAL APPLICATIONS**

Dr. Nick Ahrendt and Dr. Jasleen Chhatwal of the Arizona Psychiatric Association addressed the Board during the Public Statements portion of the virtual meeting. Drs. Ahrendt and Chhatwal also participated in the virtual meeting during the Board's consideration of this item.

Executive Director McSorley summarized that the confidential health questionnaire included in the initial license application was modified and separated into two questions. She explained that the first question has been modified into a more general question focusing on impairment. She stated that the follow up question involved whether the applicant is currently being treated or monitored for a disease or condition which if untreated would affect their ability to safely practice. Executive Director McSorley stated that the proposed language is an attempt to balance the issue of destigmatizing mental health questions with obtaining information that the Board would need to license a safe practitioner. She stated that staff will be preparing FAQs to provide guidance on how to answer the questions after implementation.

Dr. Krahn stated her appreciation for the input received during Public Statements in addition to the input received at the PHP Committee's last meeting regarding the licensing application's confidential questionnaire. Dr. Krahn recalled concerns raised regarding the renewal question with suggestion that there not be a renewal question and that the Board rely solely on self-reporting by the applicants. Dr. Krahn stated her concerns regarding this suggestion in that a balance is needed between protecting the public and not disincentivizing physicians that need treatment. She noted that the Board has at times encountered individuals who lacked insight and would be very unlikely to self-report and stated that the Board's proactive measure of the renewal question would more than likely result in a self-report versus not including the question on the renewal application. Dr. Krahn spoke in favor of adopting the question for the initial license application and suggested reworking the renewal question to help applicants understand the Board is asking for health conditions that affect the individual's ability to exercise judgment and skills of a medical professional. She also clarified that the timeframe with which this applied would be since the individual's last renewal and not just on the day the application is completed.

Executive Director McSorley clarified that the follow up question is intended to ask the applicant if they are currently being monitored by another state board. She explained that individuals participating in confidential monitoring with another state board could potentially be placed on a similar agreement in Arizona and would remain confidential. Executive Director McSorley asked the Board whether the follow up question should remain on the renewal application and whether it needed modification. She reported that the second letter submitted by the Arizona Psychiatric Association indicated their opposition to any of the follow up questions that ask whether the individual is being treated or monitored. Ms. Bain commented that the question in its current form could result in answers that are not expected or applicable. Executive Director McSorley confirmed that the follow up question applied to individuals that respond in the affirmative to the first question.

Dr. Chhatwal stated her appreciation for the Board members' comments and stated that the Arizona Psychiatric Association's concerns related to the confusion raised by the way the question is currently worded. Dr. Chhatwal stated that the Association would support the question asking if the individual is being monitored or have completed monitoring by another board. Chairman Farmer thanked Dr. Chhatwal for her feedback and participation. Dr. Beyer stated that when he read the question as proposed, he did not realize that it related to monitoring by another board. He also spoke against relying solely on self-reporting as he does not believe that everyone is aware that they should self-report, and he stated that the question regarding monitoring by another board should explicitly be asked on the renewal application.

Chairman Farmer observed that it was the consensus of the Board to approve question number one and that question number two needed additional work to clarify what the Board is asking. He also suggested working with stakeholders to establish FAQs. Dr. Krahn spoke in favor of proceeding with the initial licensure question and return the renewal question to be reworked. Executive Director McSorley suggested returning both questions for further review and consideration in collaboration with stakeholders. Dr. Krahn stated that the questioned needed to be very specific for the sake of clarity. Chairman Farmer instructed staff to forward the proposed language to Dr. Krahn as Chair of the PHP Committee for review prior to returning to the Board. Chairman Farmer thanked the meeting participants for their feedback and consideration on this topic.

#### **M. UPDATE, DISCUSSION AND POSSIBLE ACTION REGARDING THE REPORTING OF INTERIM PRACTICE LIMITATIONS (“IPLs”) TO THE NATIONAL PRACTITIONER DATA BANK (“NPDB”)**

Executive Director McSorley reported that the NPDB has deemed the Board non-compliant with its reporting due to the non-reporting of IPLs. She explained that IPLs are utilized in matters involving an individual who has an illness that needs to be removed from practice immediately. She stated that the staff has been working with the NPDB and have discussed the potential implications of reporting IPLs to the NPDB in relation to ADA and due process. Executive Director McSorley stated that she planned to submit formal correspondence to the NPDB to try and further the discussion and possibly resolve this issue. She reminded the Board that previous email correspondence from the NPDB indicated that IPLs do not need to be reported.

Dr. Beyer questioned the potential consequences of being deemed non-compliant by the NPDB. AAG Smith explained that one consequence is being deemed non-compliant by the NPDB and being labeled as such on their website. She stated that according to statute, after being deemed non-compliant and given an opportunity to correct the issue, the Secretary of HHS can designate another entity for the reporting of this information. Dr. Beyer commented that he believed the Board had some obligation to the physicians who sign IPLs with the understanding that it would not be reported. Executive Director McSorley stated that she will make further attempts to reach a resolution with the NPDB. Chairman Farmer emphasized the importance of reminding the NPDB of the previous email correspondence on which the Board has on this issue. Executive Director McSorley also informed the Board that the Governor’s Office has been informed of this issue.

#### **N. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING INTERIM PRACTICE AGREEMENTS**

Executive Director McSorley informed the Board that staff has ceased the use of IPLs and explained that if such a circumstance were to arise where an individual reports mental impairment and are not willing to enter into an Interim Practice Restriction will require summary action by the Board. She clarified that this is the alternative to utilizing IPLs while the cases are investigated.

AAG Smith explained the difference between an IPL and an Interim Practice Restriction and reiterated that staff has ceased the use of IPLs in light of the NPDB reporting issues that are being discussed. She stated that Interim Practice Restrictions are used as a tool for the Board to remove a physician from practice when concerns are raised and unprofessional conduct has been identified. She clarified that by ceasing the utilization of IPLs, the Board may see an increase in the number of summary action matters.

#### **O. THIS ITEM WAS PULLED FROM THE AGENDA.**

#### **P. APPROVAL OF MINUTES**

- April 7, 2021 Teleconference Meeting, including Executive Session
- April 8, 2021 Summary Action Teleconference Meeting, including Executive Session

**MOTION:** Ms. Bain moved for the Board to approve the April 7, 2021 Teleconference Meeting, including Executive Session, and the April 8, 2021 Summary Action Teleconference Meeting, including Executive Session.

**SECOND:** Dr. Krahn

**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.**

## **OTHER BUSINESS**

### **Q. GENERAL CALL TO THE PUBLIC**

AW addressed the Board during the General Call to the Public in support of the suggestion to publish a copy of the FSMB article on the Board's website available to the public and she reiterated her Public Statements comments.

### **R. ADJOURNMENT**

**MOTION:** Ms. Jones moved for the Board to adjourn.

**SECOND:** Dr. Krahn

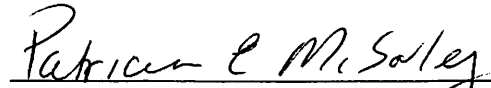
**VOTE:** The following Board members voted in favor of the motion: Chairman Farmer, Vice-Chairman Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.

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

**MOTION PASSED.**

The Board's meeting adjourned at 2:22 p.m.



  
Patricia E. McSorley, Executive Director