



## Arizona Medical Board

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### FINAL MINUTES FOR ADMINISTRATIVE JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Wednesday, June 9, 2021 1740 W. Adams St., Board Room 4100 • Phoenix, Arizona

#### *Committee Members*

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

Laura Dorrell, M.S.N., R.N.

R. Screven Farmer, M.D.

Gary R. Figge, M.D.

Pamela E. Jones

Lois E. Krahn, M.D.

#### GENERAL BUSINESS

##### A. CALL TO ORDER

Chairwoman Bain called the Committee's meeting to order at 9:33 a.m.

##### B. ROLL CALL

The following Committee members participated in the virtual meeting: Chairwoman Bain, Ms. Dorrell, Dr. Figge, Ms. Jones and Dr. Krahn. The following Committee member was absent: Dr. Farmer.

##### 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"); Michelle Robles, Board Operations Manager; and Andrea Cisneros, Minutes Administrator.

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

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

##### D. APPROVAL OF MINUTES

- March 9, 2021 Administrative Joint Legislative and Rules Committee

**MOTION:** Dr. Krahn moved for the Committee to approve the March 9, 2021 Administrative Joint Legislative and Rules Committee.

**SECOND:** Ms. Jones

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

**VOTE:** 3-yay, 0-nay, 2-abstain, 0-recuse, 1-absent.

**MOTION PASSED.**

##### E. UPDATE ON RULES

Executive Director McSorley updated the Board regarding the five year rule review process, reporting that the Agency is currently moving into the rulemaking phase. She stated that the Board has received approvals from the Governor's Office to proceed including a one year exemption to create a fee schedule for the telehealth registration process relating to the recently enacted telehealth law. She reported that the staff has received some inquiries from out of state physicians regarding the

telehealth registration. Executive Director McSorley asked the Committee to review and consider the proposed fee schedule to make a recommendation to the Board, and if approved, she anticipated implementation of the new process by the end of June 2021.

Executive Director McSorley reported that the Board would be considering proposed rule changes relating to the confidential questionnaire included in the license application at its meeting scheduled for June 10, 2021. She stated the Board will also be considering Article 7 relating to office based surgery.

#### **F. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING PROPOSED RULES FOR ARTICLE 2 LICENSING**

Executive Director McSorley presented proposed changes to Article 2 stemming from the five year rule review relating to the removal of "hospital affiliation" as statute defines medical employment and incorporates hospital affiliation. She presented a second proposed change to Article 2 that related to allowing a copy of the applicant's birth certificate or passport notarized or certified by a governmental agency. Ms. McSorley stated that if approved by the Board and the Governor's Office, she planned for the Agency to move ahead with the rulemaking process as expeditiously as possible to make the necessary changes to Article 2.

**MOTION: Dr. Krahn moved for the Committee to recommend that the Board approve the proposed changes to Article 2 to improve the wording and provide clarity.**

**SECOND: Ms. Dorrell**

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

**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

#### **G. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING PROPOSED RULES FOR ARTICLE 3 DISPENSING OF DRUGS AND 6 DISCIPLINARY ACTION**

Executive Director McSorley presented minor proposed changes to Article 3 to update the rules to be more cohesive with modern modalities such as the computerization of patient health records. The Committee considered the proposed amendments to the dispensing rules to add the patient's date of birth as an additional identifier to ensure the identity of the patient to whom the medications are being dispensed, and to require that the computer used to maintain a dispensing log be password protected. The Board noted additional proposed change that involved allowing the dispensing of scheduled II controlled substances for treatment of substance abuse disorders and adding a subsection to the rule to reference A.R.S. § 32-1921(e) relating to licensed physicians who dispense medications and devices at a public health facility or qualifying community health center are exempt from dispensing registration fees.

Dr. Figge questioned whether fingerprints could be used as an alternative to a password to access dispensing logs. Dr. Krahn suggested changing the proposed language to something more inclusive such as biometric identifiers to cover a broader scope of access authorization methods. Executive Director McSorley confirmed that the language will capture the Committee's suggestion of broadening the scope of the method of authorization used to securely access dispensing logs. Executive Director McSorley reported that there was an additional change proposed relating to the correction of a cross-reference to conform with the Board of Pharmacy statutes.

**MOTION: Dr. Krahn moved for the Committee to recommend the Board approve the proposed changes to Article 3 with the addition to the biometric identifier language.**

**SECOND: Dr. Figge**

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

**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

## **H. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING PROPOSED RULES FOR ARTICLE 7 OFFICE BASED SURGERY USING SEDATION**

Executive Director McSorley reported that there were no proposed rules stemming from the five year review report relating to Article 7 and that she would like to solicit input from the Board on this topic. Ms. Dorrell commented on section R4-16-705 and stated her concerns that minimum sedation could quickly become moderate sedation in these settings. The Committee directed staff to review Article 7 and make some suggestions if changes are needed.

## **I. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING FEES FOR TELEHEALTH REGISTRATION FOR OUT OF STATE PROVIDERS**

Executive Director McSorley reported that the registration would occur on an annual basis with a proposed schedule fee of \$500 for initial registration and a \$250 annual renewal fee. She clarified that out of state physicians who intend to have more than ten telehealth encounters in Arizona.

Dr. Figge questioned whether the renewal fee should be increased given that staff's processing of registration renewals annually would be more work than processing regular licenses every other year. He suggested a \$300 annual renewal fee and to revisit the fee schedule at a later time. Executive Director McSorley explained the difficulties encountered with establishing these fees given that the registration is the first of its kind and staff cannot predict how much work will be involved with processing the renewals on an annual basis. Ms. Jones stated that she agreed with Dr. Figge's comments, and she suggested increasing the annual registration renewal fee given the increase in workload for Board staff. Dr. Krahn spoke in support of the fee scheduled matching or being slightly higher than that of a regular license. After further discussion among the Committee and staff, Dr. Figge spoke in favor of the proposed fee schedule of \$500 for initial registration and a \$250 annual registration renewal fee. He suggested that the process be monitored and revisited in the future.

Executive Director McSorley clarified that the Board's website will include a list of physicians who hold telehealth registration in Arizona. She explained that the application review process will include queries of the AMA, NPDB and the FSMB to determine whether the individual is licensed in any other state and whether they have a history of disciplinary action, and that the application will include an attestation regarding any pending investigations. Executive Director McSorley informed the Committee that applicants will be required to name an agent for service in the State of Arizona and submit proof of malpractice insurance. She confirmed that the work relating to the substantive review and processing of the registration initial and renewal applications will be similar to the processes related to a regular license with some exceptions, and that the staff will need to find methodology for maintaining a record of the telehealth provided into the state as the physicians are required by statute to track the telehealth they provide into the State.

Dr. Figge questioned whether the Board would have the ability to address any complaints relating to the services provided under the telehealth registration. Executive Director McSorley stated that the statute provided the Board primary jurisdiction over these complaints and that the Board would have the ability to refer matters to the individual's home state. She reported that the Board has one year to establish the fee schedule in rule, and that she anticipated this to be a popular registration as staff has already received some inquiries from out of state physicians.

**MOTION: Dr. Figge moved for the Committee to accept the recommended fee structure of \$500 for the initial registration application and \$250 for the annual registration renewal.**

**SECOND: Dr. Krahn**

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

**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

## **J. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING BUDGET AND ADMINISTRATIVE ISSUES**

Executive Director McSorley informed the Committee that the budget cycle ends June 30, 2021 and referred the members to the graph in the file to review the Agency's expenses. She reported that the

most significant portion of the Board's budget includes employee related expenses, and that additional expenses relate to rent and contracts with various providers including the Attorney General's Office, temporary services and outside medical consultants. She stated that another large portion of the Board's budget is related to IT Services. Executive Director McSorley reported that the Board current has pending budget package with an appropriate increase request to fund IT needs including the ability for licensees to pay fees by credit card through the database. She stated that the Agency recognizes that there is room for improvement regarding electronic communications with the regulated community.

In response to Chairwoman Bain's questions, Executive Director McSorley confirmed that the Agency spent less than anticipated and she clarified that the Board does not receive money from the State's General Fund, but rather, contributes to the General Fund. She further clarified that the appropriation increase would not come from the Board's Reserve Fund, and that the appropriation increase would be supported by the Agency's revenue. Executive Director McSorley explained that the increase in funding would be spent on IT needs and would become part of the Board's general appropriation going forward. The Committee noted that the Board had not received an increase in its appropriation in over ten years.

Chairwoman Bain applauded the Executive Director for her hard work and efforts on the budget and asked about the status of vacant staff positions. Executive Director McSorley reported that a vacant investigator position was recently filled and that some staff positions will remain vacant due to the streamlining of some Board processes. She stated that staff continues to re-evaluate personnel needs to determine if adjustments are needed. Ms. Jones stated that the Executive Director has done an excellent job with the budget. Executive Director McSorley stated that she would provide the Board with an update at its July 2021 meeting.

## **K. ADJOURNMENT**

**MOTION: Dr. Krahn moved for the Committee to adjourn.**

**SECOND: Ms. Jones**

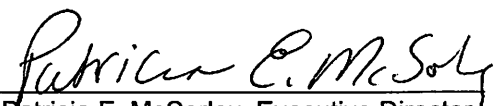
**VOTE: The following Committee members voted in favor of the motion: Chairwoman Bain, Ms. Dorrell, Dr. Figge, Ms. Jones and Dr. Krahn. The following Committee member was absent: Dr. Farmer.**

**VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

The Committee's meeting adjourned at 10:37 a.m.



  
Patricia E. McSorley, Executive Director