Arizona Medical Board

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DRAFT MINUTES FOR BOARD REVIEW COMMITTEE B TELECONFERENCE MEETING
Held on Wednesday, December 1, 2021
1740 W. Adams St., Board Room A • Phoenix, Arizona

Committee Members
Gary R. Figge, M.D., Chair
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.
Eileen M. Oswald

GENERAL BUSINESS

A. CALL TO ORDER
Chairman Figge called the Committee's meeting to order at 8:02 am.

B. ROLL CALL
The following Committee members participated in the virtual meeting: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.

ALSO PRESENT
The following Board staff participated in the virtual meeting: Kristina Jensen; Deputy Director; Kathleen Coffer, MD; Medical Consultant; Heather Foster, Board Operations Department; and, Amy Skaggs; SIRC Coordinator. Mary Williams, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS
Gary R. Figge, M.D., Chair

D. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA
Individuals that addressed the Committee during the Public Statements portion of the virtual meeting appear beneath the matter(s) referenced.

E. APPROVAL OF MINUTES

- October 25, 2021 Board Review Committee B Teleconference

  MOTION: Dr. Bethencourt moved for the Committee to approve the October 25, 2021 Board Review Committee B Teleconference.
  SECOND: Ms. Oswald.
  VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
  VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
  MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-19-0463A, IVOR BENJAMIN, M.D., LIC. #40592

Dr. Benjamin was present virtually with counsel Paul Giancola.
Dr. Bakhru addressed the Committee during the Public Statements portion.

Board staff summarized that the Board initiated the case after receiving notification from Banner Boswell Medical Center (BBMC) that Dr. Benjamin had voluntarily agreed to refrain from performing robotic operative procedures. After a peer review Dr. Benjamin's privileges were reinstated on May 9, 2019. Based on the report four cases were pulled for review. Patient RA had a history of hepatocellular cancer and cirrhosis and was referred to Dr. Benjamin with post-menopausal bleeding. A laparoscopic robotic hysterectomy was initiated but significant bleeding was identified upon entry with the trocar. The laparoscopic procedure was completed. The patient was transferred to the ICU and required pressors and a Hgb of 6.6 was noted with additional transfusions given. The patient coded and after resuscitation, she received 22 more units of PRBCs along with other blood products prior to a return to the OR. Continued operative treatment was unsuccessful and the patient died. LS was a patient with post-menopausal bleeding. LS reported a benign endometrial biopsy five months prior and elected to proceed with a hysterectomy. Lysis of small bowel adhesions was performed at the time of the initial procedure. The following day, LS was noted to have pain, tachycardia and dyspnea. Patient was sent for a CT due to a possible bowel perforation. The CT showed air in the abdomen. LS was taken back to surgery and a small bowel resection was completed. A probable peri-operative aspiration was noted. LS was intubated and transferred to the ICU. Septic shock was diagnosed and the patient died from respiratory and renal failure. PS was a morbidly obese female patient who was referred to Dr. Benjamin with post-menopausal bleeding. An exploratory laparotomy with total abdominal hysterectomy with bilateral salpingo-oophorectomy (TAH-BSO), omentectomy and peritoneal biopsies were performed. PS was transferred to the ICU with no documentation. She developed acidosis and severe hypotension. Dr. Benjamin was contacted and ordered an H&H along with abdominal pressure measurements. The patient returned to the OR when increased abdominal pressures were noted. Subsequently the patient began bleeding and died 2 days later. FC presented to Dr. Benjamin with a positive biopsy of the omentum showing serous carcinoma. FC elected surgery and extensive disease was identified. Post-operatively, FC developed hypotension and severe anemia. Dr. Benjamin was contacted and elected to perform a bedside drainage of the abdomen, rather than returning FC to the operating room. After continued transfusions, FC was taken to the operating room, seven hours later, for exploration, 3 liters of blood clots with fluid were identified along with an arterial bleeder. FC remained in the hospital for a month before being transferred to a rehab unit where she died three weeks later. Dr. Benjamin was offered an Interim Consent Agreement (ICA) for a competency evaluation and recommended an ICA for practice restriction prohibiting him from performing robotic operative procedures until he completes a competency evaluation and complies with any recommendations from the evaluating facility. Dr. Benjamin declined the ICA and a summary action meeting was held where the Board order the physician to complete the ICA for a competency evaluation without an ICA for practice restriction. Dr. Benjamin underwent a competency evaluation, which identified concerns and resulted in Dr. Benjamin entering into an Interim Order for Practice Evaluation requiring Dr. Benjamin to have 100% of his operative cases and a minimum of five physical examinations reviewed by a Practice Evaluator. PACE recommended that Dr. Benjamin have 3-5 years of practice monitoring and not work in solo practice.

Dr. Benjamin provided an opening statement and what occurred with Banner's peer review and the Board approved monitor. Dr. Benjamin is against the recommendation presented by the Board staff due to the severe consequences. Dr. Benjamin stated that

he met the standard of care in these four cases but acknowledges that they provide an opportunity for him for reflection and improvement in his care.

Mr. Giancola provided an opening statement and noted that Dr. Bakhru spoke on Dr. Benjamin's behalf and opined that he does not require monitoring. Probation will not allow Dr. Benjamin to practice within Banner and would cause harm to his practice. Mr. Giancola requested that Dr. Benjamin not be placed on probation or a restriction.

During questioning, Dr. Benjamin agreed that with regard to patient RA his pre-op workup appeared thin in the record and he has since improved his documentation. Patient RA was referred to him with a biopsy for endometrial cancer. He had a discussion with the referring physician who stated that RA had chronic stable liver cancer and opined that the endometrial cancer posed a higher risk. With regards to patient LS, Dr. Benjamin explained that although the biopsy was benign the final pathology was not benign. In the treatment the patient was presented with a few options for management and the patient chose to move forward with the hysterectomy as it would be definitive, and she did not want to undergo multiple procedures. If the DNC was performed and it showed pathology or endometrial hyperplasia, then a hysterectomy would be recommended. Dr. Benjamin informed the Committee that he has never been in solo practice and only works at Honor Health. Dr. Benjamin noted that he is credentialed at all six locations but only works at two of the facilities on a weekly basis. Dr. Benjamin explained that he no longer practices at the Banner facilities only Honor Health. Dr. Benjamin explained the C-stats program by Johnson and Johnson program where a device records your performance while in surgery. The performance is then reviewed and feedback is provided. This program did not exist at the time of these four cases.

Mr. Giancola provided a closing statement stating that these cases were unexpected and Dr. Benjamin has taken this seriously and there have been improvements towards his practice and medical recordkeeping. Mr. Giancola requested that the physician not be placed on probation.

During deliberation, Dr. Beyer opened that there was unprofessional conduct with regards to an E and R violations.

MOTION: Dr. Beyer moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) and (r).
SECOND: Dr. Bethencourt.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

MOTION: Dr Beyer moved for the Committee to issue a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.
SECOND: Dr. Bethencourt.
Dr. Bethencourt opined that Dr. Benjamin has remediated the situation and thus probation is no longer warranted. Dr. Beyer opined that there has been substantial remediation within Dr. Bemjamin's practice and there is no concern regarding his ability to practice safely. Dr. Beyer also noted that Dr. Benjamin's patient population is challenging; however, four patient deaths in such a short timespan is troubling.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

G. FORMAL INTERVIEWS

1. THIS CASE HAS BEEN PULLED FROM THE AGENDA.

H. FORMAL INTERVIEWS

1. MD-19-0344A, MD-19-0458A, MD-20-0602A, MD-20-0674A, VIJENDRA SWARUP, M.D., LIC. #30467

   Dr. Swarup was present virtually with counsel Andrew Plattner.

   Board staff summarized that case MD-19-0344A was opened after another physician reported that Dr. Swarup had taken pictures of patient information in the Electrophysiology lab at Arizona Heart Hospital, although Dr. Swarup was not involved in the patient's care. Dr. Swarup reported that he had taken the pictures on the recommendation of his attorney. The medical records showed that the patient was under the care of the complainant physician and had been transferred to Arizona Heart Hospital for a laser lead extraction. Dr. Swarup admitted that he used his phone to take a picture of protected information regarding patient RL. Case MD-19-0458A was opened after Dr. Swarup resigned his hospital privileges while under investigation for unprofessional conduct. Peer Review information showed a history of behavioral concerns including reusing a single use retractor, leaving the hospital when a patient was under anesthesia awaiting a procedure, and intimidating behavior with lab staff. Dr. Swarup failed to successfully complete the Pulse 360 Program as recommended by the Medical Executive Committee (MEC), and the MEC voted to summarily suspend Dr. Swarup's privileges after they also received a report that Dr. Swarup used his cell phone to take a picture of patient information. Board staff selected two patients for review by a Medical Consultant ("MC") based on concerns that Dr. Swarup had left the hospital while the patients were under anesthesia. In both cases, the MC identified in-room times that were significantly earlier than procedure start times and stated that the length of anesthesia is clearly associated with adverse patient outcomes. The MC reported that there was an inappropriate prolongation of both patients' anesthesia, placing them at risk for complications such as nosocomial pneumonia. Case MD-20-0602A involved the care of a patient seen in a telemedicine consultation after an ER visit for palpitations. The patient reported not being informed that the visit was going to be via telemedicine and stated that Dr. Swarup had been on the phone during the appointment. Billing concerns were also raised, as the patient had not undergone the procedures that were billed and had not been seen for an extended visit. The OMC stated that the patient should have been informed in advance of the visit that he would not be seeing the cardiologist in person, but via telemedicine. The MC also opined that ordering a possible electrophysiology test and ablation was overly aggressive, but noted that overbilling issues had been addressed and the bill modified. Case MD-20-0674A was opened based on a complaint of a patient (PR) undergoing replacement of a loop recorder, in which the patient reported that Dr. Swarup was talking on the phone during the procedure and caused a great deal of discomfort. The patient had also gone into atrial fibrillation ("afib") and had to be cardioverted after the procedure. The MC found no apparent issues regarding the surgical technique. The MC also stated that the patient's loop recorder showed relapse into persistent afib since February and stated that there was a risk for stroke, as the patient was on no anticoagulation when he was cardioverted. SIRC recommended an Advisory Letter for taking pictures of protected healthcare information, leaving the hospital with patients prepped and anesthetized awaiting surgical procedures, failing to inform a new patient prior to the appointment that the visit would be via telemedicine, and for failing to assure adequate anticoagulation in a patient with sustained afib prior to cardioversion. SIRC also recommended intensive in-person CME courses in Ethics and Patient Communication. A lengthy supplemental response was subsequently received, which outlined opinions as to why the cases should all be dismissed and included letters of support for Dr. Swarup. The Board considered these cases at the August 24, 2021 Board Teleconference Meeting and expressed multiple concerns. The Board recommended that Dr. Swarup be offered a Consent Agreement for a Letter of Reprimand with Probation to complete CPEP's PRoBE's Ethics course and CPEP's

patient Communication course, with an invitation for a formal interview if the Consent Agreement was declined.

Dr. Swarup provided an opening statement giving a brief summary regarding the circumstances for each case. Dr. Swarup noted that there were no adverse patient outcomes.

During questioning, Dr. Swarup confirmed that he was instructed to take the photo by his counsel and agrees that this does not dismiss the HIPPA restrictions but noted that there was no personal identifying information ("PHI") in the photo. If there was PHI in the photo it would have been redacted per his counsel's instructions. Dr. Swarup explained that no PHI was ever distributed. Dr. Swarup explained that with regards to having a specific consent form, the consent form was for A-fibrillation and states that includes anything to safely complete procedure. Dr. Swarup explained that the surgical team did not communicate to him prior to starting anesthesia on his patient as he was not in the hospital at the time and rushed to get back to complete the procedure. The surgical team agreed this was their fault and not his. Dr. Swarup disagreed with the MEC concern that he created an intimidating atmosphere with the staff and that this was a situation of hospital politics. Dr. Swarup spoke to the concern regarding sharing his password and confirmed that he has never shared his password but occasionally has a scribe. Regarding patient CM, Dr. Swarup explained that the progress note was done by a scribe and is reviewed by the physician within a few weeks. The medication refill was before he had signed off on the progress note. Dr. Swarup explained that patient PR came into the ER with sinus rhythm. He was provided a local anesthetic to change out the device. During the procedure he went into afib and was highly symptomatic. Then the patient insisted that he be cardioverted.
Dr. Swarup explained that he was unable to fulfill the Abrazo requirement since he was unable to obtain enough survey responses. Dr. Swarup stated that he did not resign while under investigation at the hospital. He stated that the courses were not willing to be modified and he would have his privileges suspended and an NPDB report would be submitted. Dr. Swarup explained that he recorded the conversation with the hospital CEO/administration to protect himself. Dr. Swarup further explained that he was not in the hospital when he received a text that his patient was being placed under anesthesia. That was not appropriate communication and the anesthesia should not be administered to a patient without the physician in the hospital. After the case he received a text to see hospital administration. Therefore, he recorded the conversation as he thought it was legal to record.

In closing, Mr. Plattner stated that no PHI was disclosed and therefore there was no infraction. Mr. Plattner noted that all hospitals have their own set of issues and politics. In this case Dr. Swarup no longer wanted to be within the hospital politics and resigned his privileges. There was no infraction. Mr. Plattner stated that there was no discrepancy in patient care.

In closing, Dr. Swarup provided a statement to the Board. Dr. Swarup stated that ultimately it is the anesthesiologist's responsibility to safely administer anesthesia and noted that he is open to suggestions from the Board.

Dr. Bethencourt opined that there has been unprofessional conduct under A.R.S. § 32-1401(27)(b) and (r) and requested that a finding of unprofessional conduct under A.R.S. § 32-1401(27)(e) be added for failure to maintain adequate records for the progress note.

Ms. Williams informed the Committee that the physician was not noticed for a violation under A.R,S. § 32-1401(27)(e) and, therefore, that cannot be added.

Dr. Bethancourt expressed disappointment that Dr. Swarup did not take responsibility for anything and projected responsibility on others.

MOTION: Dr. Bethencourt moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27)(b) and (r).
SECOND: Ms. Oswald.
Dr. Beyer commented that hospital politics do exist, and the physician was aware of the environment in which he was practicing.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Dr. Beyer opined that there are multiple issues in this case however this does not rise to the level of discipline. Dr. Beyer opined that an Advisory Letter with CME is appropriate. Dr. Figge agreed and found it mitigating that there was no patient harm in these cases. and opined that non-disciplinary CME in ethics is appropriate. Ms. Oswald expressed great concern for the physician leaving the hospital with a patient prepped and anesthetized as there could have been harm. Ms. Oswald spoke in favor of an Advisory Letter with CME.

MOTION: Dr. Bethancourt moved to issue an Advisory Letter and Order for Non-Disciplinary CME for taking pictures of protected healthcare information, leaving the hospital with patients prepped and anesthetized awaiting surgical procedures, failing to inform a new patient prior to the appointment that the visit would be via telemedicine, and for failing to assure adequate anticoagulation in a patient with sustained atrial fibrillation prior to cardioversion. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, Dr. Swarup shall complete CPEP's ProBE course in ethics. The CME hours shall be in addition to the hours required for license renewal.
SECOND: Ms. Dorrell.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

I. FORMAL INTERVIEWS

1. THIS CASE HAS BEEN PULLED FROM THE AGENA.

J. FORMAL INTERVIEWS

1. MD-21-0303A, TERRANCE J. KWIATKOSWKI, M.D., LIC. #32371

Dr. Figge informed the Committee that this physician is not able to be present and has requested a continuance.

MOTION: Dr. Bethencourt moved to continue the matter to allow the physician to present for formal interview.
SECOND: Ms. Dorrell.
Drs. Figge and Beyer commented that physicians must be responsible for their schedule and Dr. Kwiatkoswki should have been mindful of the date and time of the formal interview.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

GENERAL BUSINESS

K. APPROVAL OF DRAFT FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

1. MD-20-0554A, MEENOR SAGAR, M.D., LIC. #40769

MOTION: Dr. Beyer moved for the Committee to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.
SECOND: Dr. Bethencourt
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

L. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Figge requested if the speaker timer could be available for the Board members' viewing. Dr. Figge also inquired about the physician's ability to share their screen so the Board can review the documents they are referring to.

Ms. Jensen commented that Zoom has share screen capabilities but noted that staff is hesitant on allowing the public to have access to share their screen.

M. ADJOURNMENT

MOTION: Dr. Beyer moved for the Committee to adjourn.
SECOND: Dr. Bethencourt
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Committee's meeting adjourned at 10:49am.

Patricia E. McSorley, Executive Director