



Arizona Medical Board

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FINAL MINUTES FOR TELECONFERENCE MEETING **Held on Thursday, December 2, 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 8:00 a.m.

B. ROLL CALL

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

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

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

D. EXECUTIVE DIRECTOR'S REPORT

- Review of Fees as Required by A.R.S. § 32-1436

Ms. McSorley reported that the Board is required to review the fees annually. Ms. McSorley recommended that the fees remain as they are. The renewal fee has not changed in more than seven years and seems to be working. The initial license application fee is \$500 and the renewal fee is \$500 every two years. Ms. McSorley confirmed that the maximum fee amount is set at \$700 and if the Board runs into financial problems the fee can be adjusted. Ms. McSorley explained that this is how the Board is funded. Ms. McSorley informed the Board that physicians pay the Compact for the compact license and the licensing fee for the State. The physician is also required to pay the Board's renewal fees.

MOTION: Dr. Gillard moved to approve the fee schedule.

SECOND: Dr. Krahn.

Dr. Beyer noted that since our budget comes from the fees without a change in seven years Board staff must keep a close eye with regards to inflation.

Ms. McSorley noted that the Board does collect these fees and are in a good place financially the legislature give the Board can only spend what the legislature gives in the Board's budget. The Board must stay within the budget despite collecting more fees or having money in the reserve.

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.

- Update on Board Processes and Procedures

Ms. McSorley reported that during the Committee meetings yesterday ways to improve the meetings were discussed. With regards to issues with Board members and staff joining the Zoom meeting, Ms. McSorley suggested a practice run the day before the Board meeting. Ms. McSorley informed the Board that staff will look into a better timing system for call to public speakers to stay on time. Ms. Jensen is still making progress with refreshing Boardroom A, but noted that the Board room will not be ready for the February meeting and suggested to remain status quo with the Zoom and telephonic set up for February. Once the Board and staff return to in person meeting social distancing will need to be taken into consideration for Board members, staff and the public. Ms. McSorley noted that due to confidentiality requirements staff and participants are unable to share investigative documents during the Zoom meetings. Ms. McSorley suggested updating the notice letters to include language that recommends having a device available to have the investigation documents readily available. Documents should be identified by title document, page number and possibly the paragraph to ensure everyone is able to follow along on their individual devices.

E. CHAIR'S REPORT

Dr. Farmer stated that he appreciates the collective intelligence of this Board and is impressed with the diligence and thoughtfulness of Board members in considering these matters.

F. LEGAL ADVISOR'S REPORT

- Update regarding *Issacson et. al. v Brnovich et. el.*

Ms. Smith provided a brief update on the status of the case. Both sides have appealed the ruling on preliminary injunction to the Ninth Circuit where the briefing process has begun. However, what remains of the underlying case is also stayed while the ninth circuit process works its way through.

G. DISCUSSION REGARDING DEBRIEFING ON BOARD PROCESSES

Dr. Farmer suggested that if staff is unable to hold a full meeting in person the Board should continue with the virtual meeting format for the February meetings. Board members suggested rotating staff assignments for the Committee meetings. Board members discussed the issue of last minute changes to the agendas regarding disciplinary matters and complex discussion topics. Dr. Farmer suggested the Ad Hoc Committee have a meeting to discuss the Board's meeting process and to consider how to return to in-person meetings. Ms. Jones inquired about the process for immunocompromised individuals for returning to in person meetings. Ms. Jones also discussed changes for assisting Board members understand heavily accented call to public statements.

Board staff noted that those who are immunocompromised or have accents that are difficult to understand have the options to have someone speak on their behalf during the public statement

or may submit their statement in writing for the Board's review. Board staff also noted that at this time Boardroom A is not equipped for a hybrid meeting format.

Dr. Figge suggested contacting ArMA about how they conduct hybrid zoom meetings as they come off well. Dr. Figge also suggested that those who submit a public statement in writing should be acknowledge for the record. Board members agreed that at this time it is premature to return to in person meetings and that this is an ongoing discussion.

H. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING THE PROPOSED BREAST IMPLANT CHECKLIST DEVELOPED PURSUANT TO SB1001

Ms. McSorley informed the Board that the checklist that has been provided is the same list that the Board previously reviewed. The Committee has given final approval to the checklist. Ms. McSorley is hopeful that during the next legislative session, the statute will be amended to include not only cosmetic breast implants but also medically necessary procedures. Ms. McSorley further noted that the Committee may need to make more changes to checklist in the future. Should the FDA come out with a checklist, this can be incorporated into the Board's checklist.

Dr. Farmer noted that there may be a federal checklist that could contribute towards updating the Board's checklist. Dr. Farmer requested clarification on the Board's obligation to convene a working group.

Ms. Smith advised the Board that the statute requires Board action.

Ms. Smith confirmed that the statute defines breast implant surgery as "surgical placement of a cosmetic breast implant" and for the checklist to include non-cosmetic procedures it would require a change by the legislature.

MOTION: Dr. Beyer moved to accept the checklist.

SECOND: Ms. Oswald.

Ms. Bain opined that the Board has a responsibility to create a taskforce to review the checklist and should not take action at this time.

Ms. Smith confirmed that the Board must take action today and that the statute was passed by the legislature last session that a checklist be created. This statute requires plastic surgeons to begin utilizing this checklist on January 1, 2022. The Board voted to convene the workgroup at its October meeting. That process has taken place and is before the Board today for approval.

Board members discussed whether to take Board action on the item.

Ms. Smith advised that the statute requires Board action and noted that the Osteopathic Board is taking this issue into consideration at their meeting on Saturday. Ms. Smith further noted that a list must be available for physicians to utilize by January 1st and if no action is taken today, the Board will need to meet before the end of the year to consider the checklist.

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. The following Board members voted against the motion: Dr. Farmer, Ms. Bain and Dr. Krahn.

VOTE: 7-yay, 3-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

I. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING REQUEST BY CENTERS FOR MEDICARE AND MEDICAID SERVICES TO ENTER A COLLABORATIVE ENFORCEMENT AGREEMENT ("CEA") TO ENFORCE THE FEDERAL NO-SURPRISE BILLING STATUTE

Ms. Lund provided a presentation on behalf of the Centers for Medicare and Medicaid Services ("CMS") and informed the Board that last December Congress passed the Consolidated Appropriations Act of 2021 establishing new consumer protections related to surprise billing and transparency in healthcare. The law is generally effective on January 1, 2022. Under the law States are the primary enforcer of these requirements. If a state does not have authority to enforce or otherwise cannot substantially enforce one or more requirements given lack of resources, CMS has statutory obligation to enforce the requirements in that state. For states that do not have sufficient authority under state law to enforce but would like to do so the state could enter into a collaborative enforcement agreement. Under the agreement, the state would perform regulatory functions associated with compliance of the federal requirements and seeks voluntary compliance from the regulated parties.. If the provider refuses to comply, then the state would refer the matter to CMS for enforcement action. Ms. Lund noted that Arizona does have some statutes related to unprofessional conduct which covers violation of federal law. If this Board believes that would be sufficient to enforce these new requirements on providers, then a CEA would not be necessary.

Dr. Goldberg reported the position of the Arizona Medical Association, commenting that concerns have been raised with CMS' interpretation of this law.

Ms. McSorley noted that there has been ongoing correspondence with CMS. There are some concerns about the enforcement aspect of it. This is a legal issue and staff needs some time to review it and if the Board gives staff the direction to further review of the matter staff could do so. Ms. Smith explained that if the Board directs staff to move forward, then further review could be provided. Ms. Smith noted that she is unable to render any substantive legal advice without actually having a copy of the proposed CEA for comparison to the Board's statutes. Ms. Smith recommended that Ms. McSorley confer with the Governor's office regarding this issue.

Ms. Lund commented that the question for the medical board is to determine t whether the Board has sufficient authority to enforce these requirements with respect to providers in Arizona starting on January 1^s and discussed the options presented by CMS for Board review.

Dr. Farmer commented that this is a complicated issue and opined that it further review was warranted in conjunction with the Governor's office

Ms. Lund stated that some states enforce using state law that are equally protective or who have broad statutes to enforce federal law.

Dr. Beyer opined that the Board has the authority to find unprofessional conduct against a physician for violating federal law. Clarity is needed regarding determining whether they violated federal law in a different process than the Board has done in the past.

Ms. Lund confirmed that the Board is complaint driven and that would satisfy them as far as whether the state is substantially enforcing the requirements. She further noted that CMS would not require the State to apply similar or the exact same penalties. It would be whatever mechanism the Board has to enforce whatever penalty they impose.

Ms. McSorley commented that she is not sure staff will have definitive answer or report by January 1st. Ms. McSorley noted that one of the Board's statues is a violation of federal law but the Board also has additional billing statutes.

Ms. Lund requested a response prior to January 1st and noted that the issue could be revisited in the future.

Ms. Rivera requested if CMS could provide bench marks or some guidance regarding what they are asking the Board to investigate. Ms. McSorley reiterated that the Board has to open all of the complaints that it receives, so as a statutory requirement if CMS sends referrals those cases would be opened.

Ms. Smith advised that the Board's ability to take action after today's meeting will be constrained by open meeting laws unless they delegate the ability to communicate a response to Ms. McSorley.

Dr. Farmer commented that he is unsure of what the consequences would be of handing this over to CMS. Dr. Farmer opined that it would be helpful to obtain input from stakeholders before making a decision.

Ms. Smith commented that based on the timeframe the best decision at this time may be for the agency to stay status quo until Board staff can obtain more information.

Ms. Lund stated as a general rule, CMS can always transition back to the State. With respect to what CMS requires as far as the investigations go, they don't specify exactly what an investigation by a state has to look like.

Dr. Farmer reiterated that no action today would leave the Board with the statutory obligation to open any complaint that it receives. Doing nothing at this point would seemingly satisfy all of the Board's obligations.

Ms. Lund clarified that CMS' default is to defer to the state to enforce and commented that her impression was that the Board has the necessary authority to enforce the statute.

Dr. Bethancourt inquired about who will handle complaints around ambulance billing or hospital billing.

Ms. Smith commented that the board statutes right now only allow the board to investigate complaints made against licensed allopathic physicians and assumes other agencies will complete investigations against other licensed individuals.

Board members concluded that the most reasonable thing to do at this point is to maintain the status quo. Dr. Farmer instructed staff to research this as quickly as they can and that Board members would appreciate an update via email unless staff needs the Board to do something they need to do.

Ms. Lund stated that a letter will be provided to the Governor's Office as well as Ms. McSorley that indicates that CMS will defer to the Board to enforce the requirements with respect to providers in Arizona and agreed to provide the Board with additional information for review.

Ms. Smith recommended that the Board direct Ms. McSorley to clarify the Board's position with the Governor's Office. Dr. Farmer agreed and instructed Ms. McSorley to state that Board feels like it has a mechanism in place and that the matter needed further review before Board action could be taken.

J. THIS ITEM HAS BEEN PULLED FROM THE AGENDA.

CONSENT AGENDA

K. CASES RECOMMENDED FOR DISMISSAL

1. MD-20-1022B, MANDEEP K. RAI M.D., LIC. #27036
Complainant AM spoke during the Public Statements portion of the teleconference.

MOTION: Dr. Beyer moved for dismissal.

SECOND: Vice-Chairman Gillard.

Dr. Krahn noted the public statements that were heard and understand the concerns expressed. There was a group of physicians that were working with the patient and the decision to go one way or another wasn't the decision of a single person. Dr. Bethancourt spoke in favor of the dismissal having experienced patients that have similar symptoms, negative serology and then later on found to have Coccidioidomycosis. Dr. Bethancourt commented that it is unfortunate that the serology doesn't always pick it up.

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. CASES RECOMMENDED FOR ADVISORY LETTERS

MOTION: Dr. Beyer moved for the Board to issue an Advisory Letter in item numbers 2, 4 and 5.

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.

1. THIS CASE WAS PULLED FROM THE AGENDA.
2. MD-21-0283A, JAMES W. FOLTZ, M.D., LIC. #12263

RESOLUTION: Advisory Letter for inadequate postoperative communication. 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.

3. MD-21-0026A, ROHIT SUD, M.D., LIC. #32832

Complainant AG addressed the Board during the Public Statements portion of the teleconference. Dr. Sud and Attorney Steve Perlmutter also addressed the Board during the public Statements.

Dr. Gillard commented that this was a very unfortunate outcome but noted that there were hemopositive stools and a colonoscopy was refused. The patient was later found with metastatic disease. There was an ordered Cologuard but that was not completed. There was refusal with hemopositive stools which would play a big role in the work up of anemia. Dr. Beyer opined that the issue was that this patient needed a colonoscopy and it was not done. The physician did his duty in recommending that GI consultation. Dr. Beyer agreed that this was a tragic outcome, however; the physician did not err in the way he recommended care for the patient. Dr. Bethancourt noted that this patient had nomocromic nomocidic anemia and hemopositive stool. Even if the iron count had been low, there was blood loss at some place and opined it was the GI tract. Dr. Bethancourt disagreed with dismissing this case and spoke in favor of issuing the recommended advisory letter. Dr. Figge agreed with Dr. Bethancourt's comments and noted that further investigation was warranted. Dr. Figge spoke in favor of the advisory letter. Dr. Krahn commented that it was unfortunate that the Cologuard was not pursued. When positive, it does indicate the need for colonoscopy that would be done in a very careful manner. Dr. Krahn also expressed concern that there was a single explanation and not a broader differential diagnosis from the physician.

MOTION: Vice-Chairman Gillard moved for the Board to issue an Advisory Letter for failure to adequately evaluate abnormal laboratory studies. 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.

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.

4. MD-20-0610A, MICHAEL J. GERMAIN, M.D., LIC. #50352
MM addressed the Board during the Public Statements portion of the teleconference. Dr. Germain also addressed the Board during Public Statements.

RESOLUTION: Advisory Letter for prescribing unopposed estrogen without progesterone in a postmenopausal woman with an intact uterus. 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.

5. MD-20-0520A, JAY D. TURNER M.D., LIC. #47423
DL addressed the Board during the Public Statements portion of the teleconference.

RESOLUTION: Advisory Letter for failure to order the proper imaging studies to rule out or establish recurrent chordoma. 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.

M. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDERS

MOTION: Dr. Figge moved for the Board to issue an Advisory Letter and Order for Non-Disciplinary CME in item numbers 2 and 3.

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.

1. MD-21-0112A, FRANK J. RAIA, M.D., LIC. #36916
Dr. Raia and Attorney Cody Hall addressed the Board during the Public Statements portion of the teleconference.

Dr. Gillard noted that the hand surgeon thinks there were some different things that affected this including the history of arthritis. Dr. Gillard commented he doesn't see where patient was ignored however there was a bad outcome and an infection was missed. Dr. Gillard opined that CME was not warranted here as the physician has learned from this.

MOTION: Vice-Chairman Gillard moved for the Board to issue an Advisory Letter for failure to properly investigate a persistent complaint of a swollen and extremely painful wrist and hand in a diabetic patient. 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.

SECOND: Dr. Figge.

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.

2. MD-21-0008A, JAI KIM, M.D., LIC. #52931

RESOLUTION: Issue an Advisory Letter and Order for Non-Disciplinary CME for inadequate evaluation and examination of a patient presenting with supraclavicular swelling with tenderness, and for inadequate documentation. 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, complete no less than 2 hours of Board staff pre-approved Category I CME in the investigation of

lymphadenopathy, and complete no less than 3 hours of Board staff pre-approved Category I CME in medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.

3. MD-20-0427A, ROHIT K. PATEL, M.D., LIC. #13733

RESOLUTION: Advisory Letter and Order for Non-Disciplinary CME for prescribing lorazepam to a patient suspected of abusing benzodiazepines and failing to query the CSPMP prior to prescribing controlled substances. 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, complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding prescribing controlled substances. The CME hours shall be in addition to the hours required for license renewal.

N. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

MOTION: Vice-Chairman Gillard moved of the Board to uphold the dismissal in item numbers 1-4.

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.

1. MD-21-0353A, JOHN J. MCNERNEY JR, M.D., LIC. #17464

RESOLUTION: DISMISSAL UPHELD.

2. MD-21-0262A, ALVARO J. TESTA, M.D., LIC. #40863

RESOLUTION: DISMISSAL UPHELD.

3. MD-21-0203A, MATTHEW L. STEINWAY, M.D., LIC. #44346

JM addressed the Board during the Public Statements portion of the teleconference.

RESOLUTION: DISMISSAL UPHELD.

4. MD-21-0056A, DUSTIN M. HERINGER, M.D., LIC. #36057

SR addressed the Board during the Public Statements portion of the teleconference.

RESOLUTION: DISMISSAL UPHELD.

5. MD-20-0263A, AHMED R. ABOUZEID, M.D., LIC. #42667

DA addressed the Board during the Public Statements portion of the teleconference.

Ms. Jones agreed with the dismissal and noted that the MC did not find a deviation from the standard of care. The MC noted an issue with standard of the hospital IT and even the physician brought this problem to the attention to the hospital's IT. Ms. Jones noted the confusion and complications this could cause patients and practitioners and commented that the hospital system should take action to resolve this issue. Dr. Gillard commented that the problem with the electronic medical records is the blanket boilerplate PRN can create confusion.

MOTION: Ms. Jones moved for the Board to uphold the dismissal.

SECOND: Vice-Chairman Gillard.

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.

O. PROPOSED CONSENT AGREEMENTS (Disciplinary)

MOTION: Dr. Figge moved for the Board to accept the proposed Consent Agreement in item numbers 1, 4, 5 and 6.

SECOND: Ms. Dorrell.

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.

1. MD-20-0983A, EMIL SLOVAK, M.D., LIC. #18420

RESOLUTION: Letter of Reprimand and Probation. Within six months obtain no less than 3 hours of Board staff pre-approved Category I CME medical recordkeeping, and no less than 5 hours of Board staff pre-approved Category I CME in the evaluation and management of deep vein thrombosis. 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.

2. MD-20-0787A, BRIAN D. MARTIN, M.D., LIC. #44574

Dr. Farmer noted that there is a request from the Board's legal counsel to defer action based on a substantive error in the signed consent agreement. Ms. Smith requested that the Board return the case for further investigation to correct the consent agreement and to re-obtain the physician's signature.

MOTION: Dr. Gillard moved to return for further investigation.

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.

3. MD-20-0154A, DANIEL H. HU, M.D., LIC. #21586

Dr. Hu spoke during the Public Statements portion of the teleconference.

Dr. Figge noted Dr. Hu's statements earlier in the meeting, noting that there may be some confusion or misunderstanding and recommended the case be tabled to clarify with the physician.

MOTION: Dr. Figge moved to table the matter.

SECOND: Dr. Gillard.

Ms. Smith noted that the physician was offered the consent agreement in the normal manner and was at the time represented by counsel. Staff received communications from counsel requesting revisions to the document, while in process of considering and communicating with counsel regarding those changes, the physician forwarded a signed consent to his counsel which was then forward to the Board for approval. The physician subsequently requested an Advisory Letter. Ms. Smith advised the Board with regard to their options. Board staff noted the physician was represented when he signed the consent.

Dr. Farmer opined that the consent agreement does not seem out of proportion from his perspective. Dr. Figge agreed that the Letter of Reprimand is appropriate but wants to ensure the physician understands what he is signing.

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: Dr. Beyer.

VOTE: The following Committee 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 entered into Executive Session at 10:11 a.m.

The Board returned to Open Session at 10:32 a.m.

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

Board staff noted that it has been extremely rare that the Board has allowed a physician who has signed a consent agreement to allow them to withdraw it and expressed concerns about potential precedent set by the Board's decision.

Ms. Jones noted that the physician did have an interview scheduled but that it was pulled since he signed the consent agreement in lieu of an interview.

Ms. Robles confirmed that staff sent the formal interview invitation, confirmation letters and the rescheduled formal interview notice for the signed consent were sent to the physician's counsel and Board staff has not been notified that representation was terminated..

Dr. Krahn commented that she seconded the motion for discussion purposes. Dr. Krahn opined that the Board needs a physician's signature to count for something. This physician read the consent agreement and signed it. The Board needs to keep that in mind otherwise we are risking getting into a circular pattern where physicians can change their mind. The Board has previously upheld signed consents and not allowed them to be withdrawn. Dr. Figge commented that the intent of the motion was to simply table this matter to ensure that there was due process. The intent was never to revisit, reinvestigate or increase staff burden going forward by unintended consequences. Dr. Figge opined that there were enough questions brought up in this discussion that he would still move to table the matter until the next meeting to ensure that they get confirmation from the physician or counsel that this is signed and should act on it. Dr. Figge agreed that the best outcome would be for the physician to have signed the consent agreement but wants to make sure due process is given. Dr. Gillard agreed with the motion and noted that this does not guarantee a different outcome for this physician. Dr. Figge revised the motion language to table the matter. Dr. Krahn withdrew her second. Dr. Gillard seconded the motion.

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

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

MOTION FAILED.

Dr. Farmer commented that the Board has real concerns of just saying someone could have a take back but also ensure that we protect the public and physicians.

In response to a Board member question, Ms. Smith clarified that if the Board takes no action, then there won't be an agreement between the parties and the matter will need to be placed on at a future meeting. Ms. Smith further clarified that if the Board accepts the Order it is a final action and the physician has waived his appeal rights. The Order would move into the compliance process.

Ms. Jones commented that the physician has enrolled in additional CME but has not yet taken them. She asked whether the physician could request early termination once he has completed all the CMEs outlined in the consent agreement.

Ms. Smith confirmed that is correct and confirmed that in the past the Board has accepted consent agreements from physicians who were not represented by counsel. Dr. Beyer spoke in favor of resolving this today. Board members discussed whether an advisory letter would be appropriate for the case. Ms. Oswald opined that there is a risk of not staying consistent with past practice.

MOTION: Ms. Oswald moved for the Board to accept the proposed Consent Agreement for a Letter of Reprimand and One Year Probation. Within six months, complete the intensive, in-person medical recordkeeping course offered by CPEP. The CME hours shall be in addition to the hours required for license renewal. Within 30 days of successful completion of the CPEP CME, enroll in PIP with successful completion. The Probation shall not terminate except upon affirmative request of the licensee and approval by the Board.

SECOND: Dr. Bethancourt.

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

VOTE: 7-yay, 3-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

Dr. Farmer requested Board staff review so that it may be smoother in the future when the Board receives last minute communications. Dr. Farmer opined that was no deviation from the process by staff.

4. MD-19-0568A, JOSEPH A. DE CORSO, M.D., LIC. #37087

RESOLUTION: Surrender of licensure.

5. MD-20-0852A, TODD K. MALAN, M.D., LIC. #34046

RESOLUTION: Letter of Reprimand.

6. MD-120-0801A, MICHAEL J. FITZMAURICE, M.D., LIC. #36511

RESOLUTION: Surrender of licensure.

P. LICENSE APPLICATIONS

i. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TAKE OTHER ACTION

1. MD-21-0453A, MICHAEL D. DABBAH, M.D., LIC. #N/A

MOTION: Vice-Chairman Gillard moved for the Board to grant the license.

SECOND: Ms. Oswald.

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.

*****END OF CONSENT AGENDA*****

OTHER BUSINESS

Q. REQUEST FOR TERMINATION OF BOARD ORDER

1. MD-16-0138A, TYLER J. SUCHALA, M.D., LIC. #49271

MOTION: Vice-Chairman Gillard moved for the Board to grant the request to terminate the August 3, 2017 Board Order.

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.

2. MD-16-0243A, DAVID G. STEWART, M.D., LIC. #13560

MOTION: Vice-Chairman Gillard moved for the Board to grant the request to terminate the September 15, 2017 Board Order.

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.

R. GENERAL CALL TO THE PUBLIC

AW and FM addressed the Board during the General Call to the Public stating their concerns relating to the Board's handling of sexual misconduct cases, made several suggestions for the Board to improve its processes and asked the Board to agendize this topic for a future meeting.

S. ADJOURNMENT

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

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.

The teleconference adjourned at 11:58 a.m.




Patricia E. McSorley, Executive Director