



ARIZONA MEDICAL BOARD

1740 W. Adams St., Suite 4000 • Phoenix, Arizona 85007

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FINAL MINUTES FOR SUMMARY ACTION TELECONFERENCE MEETING Held on Wednesday, December 22, 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 4:01 p.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, Ms. Jones and Ms. Oswald.

The following Board member was absent: Dr. Figge.

ALSO PRESENT

The following Board staff and Assistant Attorney(s) General participated in the teleconference: Patricia McSorley, Executive Director; Raquel Rivera, Investigations Manager; and Michelle Robles, Board Operations Manager. Carrie Smith, Assistant Attorney General ("AAG") also participated in the teleconference.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

No one addressed the Board during the Public Statements.

LEGAL MATTERS

D. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SUMMARY ACTION

1. MD-21-0286A, JOHN A. EELKEMA, M.D., LIC. #28986

Board staff summarized that the Board initiated this case based on a confidential complaint alleging that Dr. Eelkema behaved erratically, smelled of marijuana and alcohol at work, and had a prostitute visit him at work where he discussed confidential information in front of the prostitute. Board staff redacted the identifying information in the complaint and provided it to Dr. Eelkema for his response. Board staff subsequently received additional confidential complaints reporting the same allegations and requesting confidentiality due to concerns of Dr. Eelkema's anger. Dr. Eelkema's attorney contacted Board staff and stated that the redactions of the complaint were excessive and he requested that the Board's investigative file be released to him. Board staff denied the attorney's request as it was not the appropriate time to release the case file to him. Dr. Eelkema's attorney requested an extension to respond until May 20, 2021, which Board staff granted. Board staff obtained Dr. Eelkema's workplace

records, within the records, Board staff noted that Dr. Eelkema had admitted to his workplace that he had allowed a mistress to visit him at his office. Dr. Eelkema's employer closed their investigation after warning Dr. Eelkema that he could not bring guests to work. On May 20, 2021, Dr. Eelkema submitted his licensee response to Board staff through his attorney in which he denied all of the allegations, including that he allowed a prostitute to come to his office. On May 24, 2021, Board staff issued Dr. Eelkema an Interim Order for PHP Assessment. In response, Dr. Eelkema's attorney again requested documents from the case file, specifically the copies of the other complaints mentioned in the Interim Order for PHP Assessment. Board staff denied his request. On June 9, 2021, Dr. Eelkema presented for the PHP Assessment with a Board PHP Assessor. On June 29, 2021, Dr. Eelkema's attorney requested that the Board exclude both Dr. Eelkema's written licensee response dated May 20, 2021 and any evidence obtained from the PHP Assessment with the PHP Assessor and allow him to submit a new licensee response after he is provided the opportunity to review all of the Board's evidence in the case file. Dr. Eelkema's attorney stated that the Interim Order for PHP Assessment relied on information and allegations from additional complaints and that Board staff withheld this information from Dr. Eelkema. Dr. Eelkema's attorney stated that his May 20, 2021, licensee response was predicated on the information and belief that the redacted complaint provided by Board staff was the only complaint; therefore, he stated that Dr. Eelkema's licensee response was incomplete. On August 27, 2021, Board staff received the PHP Assessor's report. The PHP Assessor documented that initially Dr. Eelkema denied that he had brought someone to his work but ultimately, after being confronted with copies of text messages, Dr. Eelkema admitted that he had brought an escort to his office. Dr. Eelkema also admitted to using Xanax not prescribed to him. The PHP Assessor found that Dr. Eelkema was safe to practice medicine if he fully participated in his recommendations which included PHP Monitoring for 2 years and undergo a psychosexual evaluation and that if Dr. Eelkema disagreed with the PHP Assessor, he could undergo a comprehensive evaluation. Board staff provided Dr. Eelkema's attorney with an Interim Consent Agreement for PHP Participation so that he could enter into PHP Monitoring as recommended by the PHP Assessor and an Interim Order for Psychosexual Evaluation as recommended by the PHP Assessor. Dr. Eelkema's attorney indicated that Dr. Eelkema was winding down his practice and requested that Board staff give him 90 days to do that after which time he would surrender his medical license. Board staff informed Dr. Eelkema's attorney on multiple occasions that the Interim Order for Psychosexual Evaluation was only postponed based on the agreement that Dr. Eelkema would enter into PHP Monitoring and that in 90 days, he would surrender his license. Dr. Eelkema entered into PHP Monitoring with a Board PHP Contractor. In October 2021, Board staff emailed Dr. Eelkema's attorney the proposed surrender consent agreement for his review and Dr. Eelkema's signature. Board staff requested that if he had any proposed changes to the surrender consent to provide them to Board staff for review and approval. Dr. Eelkema's attorney emailed Board staff wanting to know why there were four allegations of unprofessional conduct when according to him, a single admission would be sufficient. Board staff responded that the violations included in the surrender consent were all violations that could be sustained and that therefore, if he had any requests for changes, he should include that in a written request, what he would admit to and why and it would be reviewed. On December 14, 2021, the PHP Contractor notified Board staff that since December 8, 2021, Dr. Eelkema had missed checking in for testing and that he missed two urine drug screens and a PEth test that was scheduled for December 13, 2021. The PHP Contractor noted that it had been recommended that Dr. Eelkema obtain a psychosexual evaluation but he had not had one. The PHP Contractor had made several attempts to reach Dr. Eelkema with no response from him. The PHP Contractor stated that Dr. Eelkema is not currently safe to practice medicine until contact can be made with further assessment and planning for his level of care. Board staff called the PHP Contractor at 3:30 p.m. today and confirmed that Dr. Eelkema had still not returned their requests for contact as of that time. Based on Dr. Eelkema's non-compliance with his PHP Monitoring and the PHP Contractor's statement that Dr. Eelkema is not safe to practice, Board staff requested that Dr. Eelkema submit his signed surrender consent; however, Dr. Eelkema now declined to sign the surrender stating that he would not agree to any of the unprofessional conduct violations in the surrender except his admission to using Xanax without a prescription. Dr. Eelkema stated that he denied all of the other allegations. Dr. Eelkema's attorney requested that the Board remove paragraphs 2, 4 and 5 on pages 2-3 of the surrender or Dr. Eelkema would not sign the surrender. Of note, the paragraphs that Dr. Eelkema wanted removed addressed the PHP Assessor's diagnosis of a health condition and recommended psychosexual evaluation, Dr. Eelkema's admission that he let the prostitute into his workplace after hours and that Dr. Eelkema initially issued a denial of all allegations of the complaint. Board staff denied Dr. Eelkema's request to revise the surrender. On December 14, 2021, Board staff

offered Dr. Eelkema an Interim Consent Agreement for Practice Restriction for his review and signature by December 16, 2021. Dr. Eelkema declined to sign the Interim Consent Agreement for Practice Restriction. On December 16, 2021, based on his refusal to surrender his license as previously indicated, or enter into an Interim Consent Agreement for Practice Restriction due to his non-compliance with PHP, Board staff re-issued Dr. Eelkema an Interim Order for Psychosexual Evaluation. Dr. Eelkema's attorney told Board staff that Dr. Eelkema would not undergo a Psychosexual Evaluation. Board staff will note that there have been significant discussions with Dr. Eelkema's attorney in an effort to prevent summary action but despite Board staff's best efforts, a resolution could not be obtained. Therefore, Board staff requests that the Board summarily suspend Dr. Eelkema's license for public safety.

Mr. Bell stated that the information in the summary before the Board in its entirety has not been provided to counsel or the physician. Staff has refused to provide additional information for review. Dr. Eelkema felt he cannot comply as he is unaware of all the case information. Mr. Bell opined that they did not ask for anything unreasonable and Dr. Eelkema would sign the surrender or limitation if the Board proves the allegations to his satisfaction. Mr. Bell agreed that a lot has been done to prevent summary action however the Board is not willing to work with them. This is an administrative issue and not a criminal or civil matter. Mr. Bell stated that there has been no due process and that signing would require Dr. Eelkema to admit to allegations that have not been proven. Mr. Bell opined that Dr. Eelkema has not had a fair process in this matter to challenge the case before the Board.

Dr. Eelkema stated that he is retired and does not pose a risk of harm to patients at this point. He just wants to retire after having served with a license for 20 years. Dr. Eelkema opined that the initial complaint came from his ex-wife and noted that he is named as a defendant in a few malpractice cases. Dr. Eelkema stated that the Board has received fraudulent complaints against him and that have never been proven. Dr. Eelkema reiterated that all complaint information has not been shared. Dr. Eelkema noted that he complied with the Board's initial request for evaluation where he was found safe to practice, which he did for 3 months. Dr. Eelkema commented on the Board's failure to vet the complainant and that he has been unfairly accused. Dr. Eelkema disagrees with the Board's process in this case.

MOTION: Ms. Bain moved for the Board to summarily suspend Dr. Eelkema's Arizona medical license pending the outcome of a formal hearing in this matter based on a finding that the public health, safety or welfare imperatively requires emergency action by the Board.

SECOND: Dr. Krahn.

Dr. Beyer commented that the fact one is choosing not to practice is irrelevant as long as you have an active medical license. A physician with a license is still able to care for patients and if there is a cause for concern, the Board must act. Dr. Beyer stated that regardless of if this is a byproduct of personal life matters there is plenty of PHP documentation to support summary suspension. The alternate route was not acceptable to the physician and therefore summary suspension is appropriate. Dr. Gillard suggested the Board take a brief break to allow the physician and his counsel to consider signing a surrender in lieu of moving forward with the formal hearing process.

In response to a Board member's question, Ms. Smith informed the Board that if there is summary action the case will be referred to OAH to move forward with the formal hearing process for the facts and evidence to be worked out if a surrender is not accepted. In the event of summary action the physician is entitled to a formal hearing within 60 days. Ms. Smith stated that in the Board has the option of providing the parties with instruction on a revised draft for surrender for the physician and his attorney to consider. Staff previously offered a draft that cited four violations. The physician's counsel had previously stated that client would only accept a surrender that finds a violation of A.R.S. § 32-1401(27)(g).

Dr. Krahn expressed concern about the process this complaint has taken and the physician's failure to comply with the PHP. Dr. Krahn spoke in favor of a surrender but if not signed, she opined that the board must go forward with the summary suspension. Dr. Gillard explained the OAH process for the record and spoke in favor of offering a consent for surrender. Dr. Farmer expressed concern that this is not a negotiation, and that this is action taken to protect the public. Board staff has already gone through a lengthy process to reach a surrender and the Board needs to be careful of what precedent may be set. Ms. Jones noted that the physician has been non-compliant with PHP and would not agree with the offered interim consent agreement for a practice restriction or the offered surrender which has been discussed on more than one occasion. Ms. Jones opined that a break would not solve anything.

Board staff reiterated that staff has undergone significant discussions and the physician and his counsel have had time to consider the surrender and the physician would not accept all four violations. Staff would not accept a surrender with just the violation of A.R.S. § 32-1401(27)(g). If the Board would like to offer a consent for surrender, staff requested Board instruction regarding which violations to include.

Dr. Farmer opined that for transparency purposes all violations should be in the order. Dr. Gillard stated that he would accept the surrender with all violations included. He suggested this option to expedite the process as once the case has gone through the OAH process the case will be back before the Board for consideration of revocation. Dr. Beyer commented that the offer has been on the table for the past three months and another 10 minutes is not going to make a difference unless the Board omits the 3 violation that the physician finds offensive. Dr. Beyers stated that he is not inclined to not go down that path and should stick with the original motion.

Board staff noted that if the case is referred to formal hearing the physician has up until the day the case goes to trial to enter into a surrender.

Dr. Farmer commented that the OAH process provides the opportunity to investigate the evidence and provides the physician with rights. Dr. Bethancourt opined that for the physician and his attorney to claim that there hasn't been due process is them ignoring the situation and that the physician has been offered ample opportunity to sign.

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

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

MOTION PASSED.

E. ADJOURNMENT

MOTION: Dr. Krahn moved to adjourn the meeting.

SECOND: Ms. Bain.

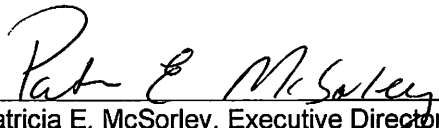
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Ms. Jones and Ms. Oswald. The following Board member was absent: Dr. Figge.

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

MOTION PASSED.

The teleconference adjourned at 4:55 p.m.




Patricia E. McSorley, Executive Director