



Arizona Medical Board

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE B TELECONFERENCE MEETING

Held on Thursday, February 3, 2022

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 8:01 a.m.

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: Patricia McSorley, Executive Director; William Wolf, M.D., Chief Medical Consultant and Michelle Robles, Board Operations Manager. Carrie Smith, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS

Chairman Figge read the civility policy for the record.

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

- December 1, 2021 Board Review Committee B Teleconference

MOTION: Ms. Dorrell moved for the Committee to approve the December 1, 2021 Board Review Committee B Teleconference.

SECOND: Dr. Bethancourt.

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-20-0709A, ABDUL S. HASHMI, M.D., LIC. #45068

Dr. Hashimi participated virtually with counsel Robin Burgess. DA addressed the Committee during the Public Statements portion of the meeting.

Board staff summarized that Dr. Hashimi began treating MA 20 months after a motor vehicle accident which resulted in chronic neck and shoulder pain. Dr. Hashimi documented that MA was seeking a surgical evaluation of thoracic outlet syndrome ("TOS"). Dr. Hashimi recommended scalene block and physical therapy. Dr. Hashimi advised MA that her symptoms were atypical and there was no guarantee that her symptoms would improve with surgery. Dr. Hashimi documented that the risks and benefits of surgery were discussed. On July 5, 2018, MA underwent a right-sided supraclavicular first rib resection and neurolysis of the brachial nerve trunks that Dr. Hashimi found to be "fairly entrenched in thick scar ". Dr. Hashimi did not use neuromonitoring during the surgery. One year later, two EMG studies arrived to the same conclusion and occupational therapy notes revealed diffused significant right upper extremity neurological disfunction. The Board's Medical Consultant ("MC") determined that Dr. Hashimi deviated from the standard of care by performing a right first rib revision without a definitive diagnosis of thoracic outlet syndrome, by performing a neurolysis surgery without intraoperative neuromonitoring and for exceeding his limits as a thoracic surgeon. Dr. Hashimi failed to timely respond to Board staff's Notice Letter and communication attempts requesting a response; therefore, the Staff Investigation Review Committee ("SIRC") also sustained a violation of A.R.S. § 32-1401(27)(ee).

In opening Dr. Hashimi apologized for not timely responding to the Board during the investigation. Dr. Hashimi explained the testing and treatment for neurogenic TOS. Dr. Hashimi informed the Committee of MA's history, symptoms, and the treatment he provided.

Ms. Burgess provided an opening statement on behalf of her client and stated that there may be a potential bias with regards to the Board MC who reviewed this case as he has a history with the practice in this case which could be a conflict.

During questioning, in response to a Board member's question Dr. Hashimi explained his rationale for proceeding with surgery despite his reservations.. Dr. Hashimi explained why he did not use neuromonitoring and noted that most thoracic surgeons do not use it. Dr. Hashimi noted that he does use it when assisting ENT physicians for phrenic nerve monitoring since they are smaller. Dr. Hashimi agreed that MA has a physical deficit in her hand and that it may have been a result of the surgery but noted that MA also had a weak grip prior to surgery. Dr. Hashimi stated that he was not happy with the result.

In closing, Ms. Burgess stated that every surgery poses risks and just because there was an injury in this case does not mean that the physician violated the standard of care. Ms. Burgess stated that this was a known complication where the patient was advised and requested dismissal.

In closing, Board staff commented that the submitted Board response of August 2021 indicated that MA had been evaluated by several previous providers and the patient was advised that she was suffering from TOS. Board staff noted that this is inconsistent with the records. Six prior providers documented concerns regarding the presence of psychogenic factors in MA. In addition, Board staff found no evidence of scalene blocks prior to MA's visit with the licensee. Board staff noted that there were multiple trigger point injections and several subacromial shoulder injections performed. The neurologist was primarily consulted for treatment of MA's headaches. One prior provider reportedly diagnosed vascular TOI, not neurogenic. Dr Hashimi documented his suspicion of a neurogenic TOS and documented that no vascular issues were present. Board staff stated that there are classifications of TOS and listed the qualifications for a true neurogenic and disputed neurogenic TOS.

In response to Board staff's statement, Ms. Burgess commented that there was a lot of new information that has been referenced that they have not had time to review and respond to.

MOTION: Dr. Figge 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. Bethancourt.

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 Board entered into Executive Session at 9:15 a.m.

The Board returned to Open Session at 9:26 a.m.

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

Dr. Figge opined that given the new information provided in Staff's closing statement and given the attorney's comment about the MC's bias this should be sent back for further investigation.

MOTION: Dr. Figge moved to send back for further investigation to provide the licensee with the opportunity to respond to Board staff's closing statement and to allow the Board's MC to respond to counsel regarding potential bias brought up in counsel's opening statement.

SECOND: Dr. Bethancourt.

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

Dr. Kwiatkowski was not present.

Ms. Smith recommended that the Committee should open the record and note the nonappearance. The Committee can invite the physician back for a formal interview or refer to formal hearing, noting this is the physician's second nonappearance.

Dr. Figge noted that this is the physician's second meeting in a row where the physician did not appear. The reason last time was due to an emergency and the Committee allowed him to reschedule for the next meeting. He should not be in the position to be on call again. Ms. Dorrell commented that this is very unfortunate, given that this physician is a specialist. Ms. Dorrell opined that the Committee should give him another opportunity to reschedule prior to referring to formal hearing.

Board staff clarified the communication provided to the physician regarding the rescheduling of the formal interview.

Ms. Dorrell opined that given the steps that were taken the case should be referred to formal hearing.

MOTION: Ms. Dorrell moved to refer the case to formal hearing for missing two scheduled formal interviews in a row.

SECOND: Dr. Beyer.

Dr. Beyer commented that this was not a difficult case but given that the physician has repeatedly not made himself available to the Board a formal hearing is the only way to resolve this matter. Dr. Figge commented that this brings up an issue of how serious the physician takes the matter and if he can be regulated by the Board.

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.

H. FORMAL INTERVIEWS

1. MD-20-0113A, YONAS E. GEDA, M.D., LIC. #37644

Dr. Geda participated virtually with counsel Amanda Kuklinski. Ms. Oswald recused from this case.

Board staff summarized that this case was initiated after receiving notification that Dr. Geda's submitted his retirement during the pendency of an investigation for concerns of unprofessional conduct towards the Hospital's clinical staff. The report from the Hospital indicating that Dr. Geda was under investigation for engaging in inappropriate sexual conduct towards staff and students. AA, a fellow, and CB, a research trainee, reported concerns regarding Dr. Geda's supervision of residents and lack of boundaries including reports of using alcohol to reward the trainees, inappropriate communication via text messages and inadequate training. In Dr. Geda's response, he stated that many of the allegations were either untrue or overblown and the complaints of sexual harassment were simply misconstrued. He also stated that his conduct did not affect patient care or the health of the public. Dr. Geda reported that by the time he left the Hospital, the investigation had concluded, and he had obtained employment elsewhere by July 14, 2020. SIRC acknowledged the completed the Professional/Problem-Based Ethics ("ProBE") program offered by the Center for Personalized Education for Physicians ("CPEP") for Ethics and Boundaries and that he was found safe to practice by the Board approved Evaluator. SIRC stated that based on the violations identified, multiple documented instances of unprofessional boundaries, and failure to fully disclose to his new employer that he resigned while under investigation, SIRC determined that this case rises to the level of discipline and recommended a Letter of Reprimand.

Ms. Kuklinski provided an opening statement and requested that the Committee either dismiss the case or issue an advisory letter.

In opening, Dr. Geda apologized for his actions and that he never intended to make anyone uncomfortable. Dr. Geda stated that he has completed the professional boundaries course which taught him about cultural differences in social cues and appropriate platonic touch. Dr. Geda stated that he has done his best to resolve the issue.

During questioning, Dr. Geda acknowledged that he had noticed some differences during his 20 years in the US but thought his actions were appropriate. He noted that he visits France where he knows kissing is normal, but knows there is a different standard in Minnesota. Dr. Geda explained what occurred with YI and agreed that alcohol was consumed. Dr. Geda stated that given what occurred, he decided not to work and retired from the Hospital. Dr. Geda referenced the letter from the Hospital regarding his resignation and the investigation. Dr. Geda stated the investigation was completed about a week before he retired. Dr. Geda confirmed that there was no complaint from clinicians and that he oversees residents on the clinical side. There has never been an issue on the clinical side. Dr. Geda explained what he learned from the ProBE course he took and confirmed that there have been no issues with his new position. He maintains his boundaries and distance.

Board staff clarified that the two research trainees worked under Dr. Geda therefore the jj violation was sustained.

In closing, Ms. Kuklinski addressed making a false statement and supervision allegations and opined that they are not sustained. Ms. Kuklinski noted the date of the letter from the Hospital which she argued confirms that the investigation had been completed by the time of Dr. Geda's retirement.

Board staff noted that the Hospital letter that Dr. Geda referred to was not provided to Board staff. The Hospital reported this to the Board on January 24, 2020 and in the letter

it did state that Dr. Geda submitted his request for resignation during the pendency of this investigation.

MOTION: Dr. Bethancourt moved for findings of unprofessional conduct in violation of A.R.S. § 32-1401(27) (r) and (u) for reasons as stated by SIRC.

SECOND: Ms. Dorrell.

Dr. Bethancourt agreed that there has been a boundary violation and noted that the physician has lived in the US for 25 years and can understand the differences in culture. The Hospital would not have not filed a complaint if there was not a resolution. Dr. Bethancourt opined that there is a lack of truthfulness in the application to Dr. Geda's subsequent employer. Dr. Bethancourt opined that the supervision violation cannot be sustained.

Dr. Figge requested clarification regarding the interpretation of the A.R.S. § 32-1401(27)(jj) violation.

In response to Dr. Figge's question, Ms. Smith explained that this violation only applies to licensed healthcare providers supervised by the physician. Ms. Smith further explained inappropriate conduct towards non-licensed staff may be found to violate A.R.S. § 32-1401(27)(r).

Dr. Beyer agreed that the behavior that was described regarding the boundary violation and the sexual conduct, whether it was intended or not, is the issue that needs to be addressed. Dr. Beyer commented that the fact that this complaint came from the Hospital indicates that the investigation was not resolved at the time Dr. Geda resigned.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer and Ms. Dorrell. The following Committee member was recused: Ms. Oswald.

VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 0-absent.

MOTION PASSED.

Dr. Bethancourt opined that this rises to the level of discipline.

MOTION: Dr. Bethancourt moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

SECOND: Dr. Figge.

Dr. Beyer spoke against the motion and opined that discipline is not warranted in this situation. There is a pattern of behavior however; the physician has mitigated the concerns through completing the continuing medical education ("CME") course and trying to address the problem. Dr. Bethancourt noted that staff requested he complete the ProBE course. Ms. Dorrell commented that the CME course has made a difference in his practice.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge and Dr. Bethancourt. The following Committee member was against: Dr. Beyer and Ms. Dorrell. The following Committee member was recused: Ms. Oswald.

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

MOTION FAILED.

MOTION: Dr. Beyer moved to issue an advisory letter for demonstrating inappropriate professional boundaries with female coworkers and for making a misleading statement on an application for privileges. While the licensee has demonstrated substantial compliance through rehabilitation and remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

SECOND: Ms. Dorrell.

Dr. Beyer opined that while this does not rise to the level of discipline it needs to be tracked. Dr. Bethancourt spoke in favor of the motion given the completed boundaries course however the ethics regarding his application was concerning.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer and Ms. Dorrell. The following Committee member was recused: Ms. Oswald

VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 0-absent.

MOTION failed.

GENERAL BUSINESS

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

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

MOTION: Dr. Bethancourt moved for the Committee to approve the Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

SECOND: Dr. Beyer.

Dr. Beyer commented that the draft reflects the Committee's previous discussion.

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.

J. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Beyer opined the process has gone smoothly.

K. ADJOURNMENT

MOTION: Dr. Beyer moved to adjourn the Committee meeting.

SECOND: Ms. Dorrell.

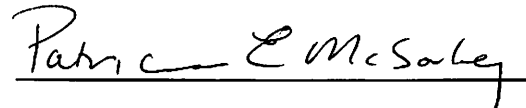
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.

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

MOTION PASSED.

The Committee's meeting adjourned at 10:44 a.m.




Patricia E. McSorley, Executive Director