



Arizona Medical Board

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DRAFT MINUTES FOR BOARD REVIEW COMMITTEE B TELECONFERENCE MEETING

Held on Wednesday, August 3, 2022

1740 W. Adams St., Board Room A • Phoenix, Arizona

Committee Members

Gary R. Figge, M.D., Chair

Katie S. Artz, M.D., M.S.

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: 8:05 a.m.

B. ROLL CALL

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

ALSO PRESENT

The following Board staff participated in the virtual meeting: Patricia E. McSorley, Executive Director; William Wolf, MD; Chief Medical Consultant; Michelle Robles, Board Operations Manager; and Amy Skaggs; Investigations. 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

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

E. APPROVAL OF MINUTES

- June 9, 2022 Board Review Committee B Teleconference

MOTION: Ms. Oswald moved for the Committee to approve minutes from the June 9, 2022 Board Review Committee A Teleconference.

SECOND: Bethancourt.

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

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

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-20-0709A, ABDUL S. HASHIMI, M.D., LIC. #45068

Dr. Hashimi participated virtually with counsel Robin Burgess.

Board staff provided a summary of the underlying facts of this case continued from a previous formal interview. .

Dr. Figge gave a summary of the discussion from the February meeting. Dr. Figge explained that this came back due to the staff's closing statement which included new information that the physician and counsel did not have time to respond to and to address Dr. Hashimi's claim that the medical consultant ("MC") could have a conflict of interest. Dr. Figge noted the MC stated that he has no conflict of interest with Dr. Hashimi and opined that he did not need to recuse.

During questioning, Dr. Figge requested Dr. Hashimi's opinion on the referenced literature and whether he would change his approach.

Dr. Hashimi opined that the cited literature does not change his opinion on what he did.

Ms. Burgess provided a closing statement where she stated that there is little evidence in the patient's history to support a TOS diagnosis and noted that the literature referenced at the last meeting clearly notes that the symptoms reported are signs of TOS. Ms. Burgess noted that neurologic TOS is diagnosed by examination and reported symptoms. Three other physicians also raised concerns of TOS. Dr. Hashimi discussed the risks of the procedure and was counseled more than once that the procedure may not work. The patient still wanted to move forward as there was likely hope that there would be some relief. Dr. Hashimi complied with the standard of care for thoracic surgeons who complete these surgeries. Ms. Burgess requested the case be dismissed or no disciplinary action be given.

Board staff provided closing comments.

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: Ms. Dorrell.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Board entered into Executive Session at 8:35 a.m.

The Board returned to Open Session at 8:47 a.m.

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

Dr. Figge instructed Committee members to disregard Board staff's closing comments.

During deliberation, Dr. Figge opined that there has been a violation of A.R.S. § 32-1401(27)(r).

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

SECOND: Dr. Beyer

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

Dr. Figge commented that this was a complicated case and the question of whether neuromonitoring should have been done during the neurolysis part of the procedure has been addressed. Dr. Figge commented that there was insufficient documentation regarding the indication for the procedure. Dr. Figge opined that there is a minimal potential for patient harm. Dr. Figge opined that CME is not required as the physician has an understanding of diagnosing of neurogenic TOS.

MOTION: Dr. Figge moved to issue an Advisory Letter for performing neurolysis surgery without intraoperative neuromonitoring and for performing a right first rib revision without a definitive diagnosis of neurogenic thoracic outlet syndrome. 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.

Dr. Bethancourt opined that Dr. Hashimi did his due diligence with this patient and explained to her the risks and benefits. Dr. Beyer commented that this was a situation where a patient was insistent of proceeding with something that was not the physician's first choice. Dr. Beyer commented that he would be critical of moving forward on a procedure with 30 percent risk of complications without have touched every base of testing. Dr. Beyer also opined regarding the issue of neuromonitoring, this was not an operative field where it was easy to identify the nerve roots.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

G. FORMAL INTERVIEWS

1. MD-21-0347A, WALTER N. SIMMONS, M.D., LIC. #29610

Dr. Simmons participated virtually without counsel.

Board staff summarized that this case was initiated after receipt of Dr. Simmons' self-report of a guilty plea to 3 misdemeanor violations of HIPAA for the wrongful use of a unique health identifier. The factual resume of the charges outlined that Dr. Simmons admitted to and agreed that on or before September 12th, 2014, he obtained a Medical History Questionnaire that contained 3 patient's unique health identifiers including their name, address, social security number, insurance member ID number, description of health history, and description of symptoms. Dr. Simmons admitted and agreed that he knowingly used the 3 patients unique health identifiers by writing a prescription for compounded drugs and faxing the prescription form to John Cooper in Dallas, Texas, which were then used by Cooper and others to commit health care fraud and violations of Anti-Kickback Statute. During the investigation, Utah, New Mexico, Tennessee and Texas took action against the licensee. OIG excluded Dr. Simmons from federal healthcare programs based on his guilty plea. Most recently, the Board received notification that California automatically suspended Dr. Simmons license based on his criminal conviction. Dr. Simmons was sentenced to 9 months in prison and ordered to pay restitution to the Defense Health Agency. Dr. Simmons was incarcerated from January 2022 to April 2022 and transitioned to a halfway house while permitted to travel and work. Board staff determined that Dr. Simmons engaged in unprofessional conduct by failing to report a felony charge within ten days, being excluded from all Federal health programs, and having action taken by multiple jurisdictions. Dr. Simmons was offered a Decree of Censure and Two Year Probation requiring compliance with the Tennessee Board Order. Dr. Simmons elected to present for a formal interview due to his disagreement with the findings of fact outlining that the charges arose out of allegations that Respondent wrote prescriptions for topical pain medications to TRICARE beneficiaries without properly establishing a physician-patient relationship for patients

located in states where Respondent was not licensed to practice medicine since those findings were not included in his final plea agreement.

Dr. Simmons provided an opening statement where he explained that the prescriptions were faxed to a technician at the pharmacy and it states in the plea "not Simmons was involved in fraud or AKS violations". Dr. Simmons explained that Utah did not prevent him from reapplying in the future and that he can do so at any time. Dr. Simmons informed the Committee that he is appealing the OIG exclusion and appealed to California. The restitution was for \$527,000 and was based on dollars loaned to a company that he was starting at the time called Elevate Seniors. Dr. Simmons stated that he never received money from this scheme. Dr. Simmons stated that he was accused of a felony but it was brought down to a misdemeanor. Dr. Simmons stated that due to these misunderstandings he did not sign the consent agreement.

During questioning, Dr. Simmons explained what a compound medication is and that they can consist of FDA approved medications but once combined they are not FDA approved. Dr. Simmons explained that this all began because he was starting a company for seniors and was approached by investors. During the relationship with the investors they had begun a combined medication company. Dr. Simmons explained that he was given a medical health questionnaire and no patient information was released. He would call these patients through telemedicine and wrote prescriptions when appropriate. He faxed the prescription to what he thought was the pharmacy, but it was the pharmacy's marketing number. Dr. Simmons noted that he contacted the Federal government once he became concerned that the company was doing something illegal. Dr. Simmons stated that he had no involvement in fraud but plead to these petty misdemeanors for HIPPA violations. Dr. Simmons stated that his attorney advised him to plead to the three violations to resolve the issue with the federal government. Dr. Simmons further stated that he has never been accused of prescribing medications that were not medically appropriate. The HIPPA violations were due to faxing to the marketing company and not directly to the pharmacy. Dr. Simmons stated that he did report the misdemeanors but admitted that he may have missed the reporting time.

Board staff clarified that in the October of 2016, Dr. Simmons was charged with a felony in the 2nd superseding indictment where they named him for the conspiracy to commit health care fraud. Dr. Simmons and his attorney informed the Board that after a lengthy trial the jury was unable to reach a verdict for the felony charge. The federal government reached a plea agreement which the Board is considering now. The Board was previously informed of potential criminal charges in case MD-15-1316A.

Dr. Simmons reiterated that the allegations were unsupported and that he did not commit fraud.

Board staff noted that once he became indicted, that become a charge and clarified that Board requires notification of the charge and not just the end result.

Dr. Simmons explained the fine he was assessed and confirmed that he is not currently practicing as a physician but would like to return to practice.

MOTION: Dr. Dorrell 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. Artz, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell and Ms. Oswald.

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Board entered into Executive Session at 9:39 a.m.

The Board returned to Open Session at 9:58 a.m.
No legal action was taken by the Board during Executive Session.

In closing, Dr. Simmons stated that he was cleared by the government of fraud and would like the opportunity to return to the practice of medicine.

During deliberations, Ms. Dorrell noted the violations cited in the SIRC report and opined that there has been unprofessional conduct.

MOTION: Ms. Dorrell moved for findings of unprofessional conduct in violation of A.R.S. §§ 32-1401(27)(a) (42 U.S.C. §1320d-6(a)(1) and (b)(1) and A.R.S. § 32-3208(A)), (p) and (q) for reasons as stated by SIRC.

SECOND: Dr. Bethancourt.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

MOTION: Ms. Dorrell moved for a Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation requiring compliance with the Tennessee Board Order. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Simmons' request for termination shall demonstrate that the Tennessee Order has been terminated.

SECOND: Dr. Bethancourt.

Dr. Beyer commented that the facts of the violations are not in dispute but acknowledged that there was no selfish motive. Dr. Beyer opined that a Letter of Reprimand was appropriate.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

H. FORMAL INTERVIEWS

1. MD-21-0636A, GHEBRU W. WOLDEMICHAEL, M.D., LIC. #31647

Dr. Woldemichael participated virtually without counsel.

Dr. Figge noted that the physician has signed the consent agreement.

Board staff confirmed that the CME Certificate provided met the requirements of the Board Order.

Board staff summarized that in October of 2020, RD presented to Dr. Woldemichael's office at Yuma Regional Medical Center (YRMC) for a consultation regarding a right ureteral stone. RD underwent a right semirigid ureteroscopy with retrograde pyelogram performed by Dr. Woldemichael. There was no stone in the ureter and it was thought the stone had retro pulsed into the renal pelvis. A ureteral stent was placed at that point. The next day a CT scan showed the stent in position and the stone in the right lower pole of the kidney with mild right hydronephrosis. Dr. Woldemichael recommended a staged extra corporal shockwave lithotripsy procedure (ESWL). The elective ESWL was planned for December 2020, but due to COVID restrictions the procedure was delayed. Three months later, RD presented for an ESWL and stent removal. He consented only for those two procedures. A discussion documenting the patient's refusal to have a stent placement and a small handwritten note were entered into the chart. After removal of the stent, Dr. Woldemichael performed a retrograde pyelogram and found hydronephrosis from the ureterovesicular junction (UVJ) to the kidney which he described as "massive." Dr. Woldemichael also performed a right ureteroscopy. Dr. Woldemichael stated that he felt it to be in the patient's best interest to have another stent given the findings and

planned to explain this to the patient in the PACU. RD was informed of the stent placement after the procedure and asked Dr. Woldemichael to remove it. Then RD dismissed Dr. Woldemichael as his urologist. The Board's MC reviewed the case and determined that Dr. Woldemichael deviated from the standard of care by inserting a right ureteral stent without consent. The MC stated that the patient had refused another stent and Dr. Woldemichael failed to document the justification for performing the procedure against the patient's wishes. The YRMC Board of Directors suspended Dr. Woldemichael's privileges for 6 weeks. Additionally, Dr. Woldemichael was required to complete anger management and patient rights courses to maintain his privileges. In the MC's opinion, there were no absolute indications for another stent. SIRC agreed with the MC and found that Dr. Woldemichael clearly fell below the standard of care by ignoring the patient's request.

Dr. Woldemichael verbally consented to the Letter of Reprimand and Probation for the record.

Ms. Smith confirmed that the Committee has the authority to accept the consent agreement in lieu of continuing with the formal interview.

MOTION: Dr. Bethancourt moved to accept the consent agreement for a Letter of Reprimand and Probation. Within six months, complete a Board staff pre-approved Category I CME in an intensive, in-person course regarding Anger Management. The CME hours shall be in addition to the hours required for license renewal. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Woldemichael's request for termination shall be accompanied by proof of successful completion of the CME.

SECOND: Dr. Beyer.

Ms. Smith confirmed that Board staff can accept the CME certificate as satisfying the probation and once processed by staff the Probation will be terminated.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

GENERAL BUSINESS

I. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

No comments were provided.

J. ADJOURNMENT

MOTION: Dr. Bethancourt moved for the Committee to adjourn.

SECOND: Dr. Beyer.

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

VOTE: 6-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Committee meeting adjourned at: 10:33 a.m.



Patricia E. McSorley, Executive Director