Arizona Medical Board

1740 W. Adams St., Suite 4000 • Phoenix, Arizona 85007
Home Page: http://www.azmd.gov
Telephone (480) 551-2700 • Fax (480) 551-2705 • In-State Toll Free (877) 255-2212

FINAL MINUTES FOR BOARD REVIEW COMMITTEE A MEETING
Held on Friday, June 9, 2023
1740 W. Adams St., Board Room A • Phoenix, Arizona

Committee Members
Gary R. Figge, M.D., Chair
Jodi A. Bain, M.A., J.D., LL.M.
Bruce A. Bethancourt, M.D., F.A.C.R., F.A.S.T.R.O.
R. Screven Farmer, M.D.
Constantine Moschonas, M.D., F.A.A.N.
Eileen M. Oswald

GENERAL BUSINESS

A. CALL TO ORDER
Chairman Figge called the Committee's meeting to order at 12:08 p.m.

B. ROLL CALL
The following Committee members were present: Dr. Figge, Dr. Bethancourt, Dr. Moschonas, and Ms. Oswald

The following Committee member participated telephonically: Ms. Bain.

The following Committee member was absent: Dr. Farmer.

ALSO PRESENT
The following Board staff participated in the virtual meeting: Patricia E. McSorley, Executive Director; Heather Foster, Public Records Coordinator; and Amy Skaggs, SIRC Coordinator; Investigations. Elizabeth Campbell, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS

D. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA
Individuals who addressed the Committee during the Public Statements portion of the appear beneath the case.

E. APPROVAL OF MINUTES

- April 5, 2023 Review Committee A Minutes

  MOTION: Dr. Bethancourt moved to approve the April 5, 2023 Board Review Committee A minutes.
  SECOND: Dr. Moschonas.
  VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Moschomas, and Ms. Oswald. The following Committee member abstained: Ms. Bain. The following Committee member was absent: Dr. Farmer.
  VOTE: 4-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-20-0167A, MARCO B. SAUCEDO, M.D., LIC. #27068
   Dr. Saucedo was present with counsel Michele Thompson.

   Board staff summarized that on February 3, 2022, Dr. Saucedo appeared for a formal interview before the Board regarding this case. Dr. Saucedo is an OB-GYN who took 6 training sessions with a cosmetic surgeon to perform cosmetic surgery. In the initial case reviewed, the physician performed an implant exchange, a reported breast lift along with liposuction of the abdomen and axilla. The MC found that the breast lift was inadequately performed. In addition, the documentation was scant and a concern about anesthesia administration was raised with a separate review performed by an anesthesiologist who concurred that Dr. Saucedo failed to properly monitor the patient with no qualified provider present to monitor the patient and administer medications. Based on this case, SIRC recommended a competency evaluation. In lieu of a competency evaluation, the physician entered into an Interim Consent Agreement for Practice Restriction that prohibited him from performing cosmetic breast procedures and from performing solo anesthesiology, requiring him to utilize an anesthesia provider for procedures. At its February 3, 2022, meeting, the Committee returned the case for further investigation of additional cases and lifted Practice Restriction for breast implant procedures and performing anesthesia because the physician had agreed to utilize CRNAs for anesthesia administration.

   Following the February 3, 2022, Committee Meeting, four cases were reviewed by a MC. CB was a 63 year old who underwent superior pedicle mastopexy, liposuction of abdomen, flanks and sacrum with fat grafting to the buttocks. The MC noted concern due to a high-volume liposuction performed (6100 cc). The standard is to observe a patient overnight if more than 5000 cc is removed. The precise amount of lidocaine Dr. Saudedo used was not documented, but the MC noted that toxicity and peak concentrations occur at 12-14 hours which was when the patient was at the hotel. BP was a 26 year old smoker with recent bariatric surgery. Dr. Saucedo did a breast reduction with no complications. The MC noted that he met the standard of care, but commented that the procedure should have been delayed until the patient's weight was stable after the bariatric procedure. SG and MA's cases did not reveal deviations from the standard of care, though the MC did find that the anesthesia concerns were present as in the initial case but, as noted, these have been remedied with the use of a CRNA. SIRC remained concerned and maintained a recommendation for a competency evaluation. It was noted that Dr. Saucedo's attorney had stated at the initial formal interview that Dr. Saucedo would be willing to complete such an evaluation but was concerned about the cost.

   Ms. Thompson provided an opening statement to the Committee and stated that during the initial formal interview he did admit to not having an anesthesiologist during the procedures, which has been remedied. The Committee discussed having Dr. Saucedo undergo a competency evaluation, which he is willing to do but did express concern regarding the cost. Ms. Thompson stated that given the limited cosmetic procedures he performs,he cannot justify the cost of the evaluation. Ms. Thompson stated that Dr. Saucedo should be allowed to practice cosmetic surgery without paying the $15,000 for the competency evaluation because has he has proved his competency through the chart reviews.

   Dr. Saucedo provided an opening statement to the Committee where he expressed concern regarding the comments made in the MC's report and how the MC failed to elaborate on some of the findings. Dr. Saucedo disagreed with the MC's comments and provided context to the concerns raised.

Dr. Figge stated for the record that since the complainant's public statement was sent yesterday, the Committee will not consider it, as Dr. Saucedo has not had that time to review the letter.

During questioning, Dr. Saucedo stated that he no longer performs cosmetic surgery without an anesthesia provider, like a CRNA. Dr Saucedo informed the Committee that he has stopped doing breast lifts due to COVID; rising cost, and patients going out of country to receive the procedure. Dr. Saucedo noted that he continues to do liposuction and breast implants. Dr. Saucedo opined that he is qualified and competent to perform the cosmetic surgeries he offers and stated he would not offer any surgery that he is not confident performing. Regarding the observing the patient after the lidocaine dose, Dr. Saucedo explained how the lidocaine is used, that his office was only a mile and a half from the hotel, was close to the ER, and she had family members to look after her. Dr. Saucedo stated that he had confidence in the recovery process and that she was safe to recover with her family. Dr. Saucedo stated that if he felt that the patient was in any danger, he would have stopped the surgery. With regards to KN, Dr. Saucedo mentioned he had a long conversation about her body composition and informed her that she would not receive a perfect round breast lift. Dr. Saucedo reported that he verbalized very well the type of results KN should be expecting. He did admit fault in not documenting the conversation and consent of the patient to the results KN should expect. Dr. Saucedo stated that he now reviews the steps being taken during the procedure and expected results on a consent form. Thus, the patient will give consent after a verbal conversation of what to expect from the surgery and the results. Dr. Saucedo mentions this way everyone is all on the same page prior to surgery.

MOTION: Ms. Bain 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. Moschonas.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Ms. Bain, Dr. Bethancourt, Dr. Moschonas and Ms. Oswald. The following Committee member was absent: Dr. Farmer.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board entered into Executive Session at 12:51 p.m.
The Board returned to Open Session at 1:07 p.m.
No legal action was taken by the Board during Executive Session.

In closing, Ms. Thompson stated that the MC has reviewed several cases with no deviations from the standard of care and opined that this is enough to prove Dr. Saucedo is competent to practice safely. Ms. Thompson further stated that 80 to 90 percent of Dr. Saucedo's medical practice is OB-GYN.

MOTION: Dr. Figge moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) and (r) for reasons as stated by SIRC.
SECOND: Dr. Bethancourt.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Dr. Farmer. The following Committee member abstained: Ms. Bain.
VOTE: 4-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Figge opined that this does rise to the level of discipline due to the potential for patient harm but the concern regarding anesthesia has been resolved. Dr. Figge opined that competency is not an issue and a Practice Restriction, Probation, or CME would not benefit the physician in his ability to safely treat his patients.

MOTION: Dr. Figge moved to issue Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.
SECOND: Dr. Bethancourt.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Dr. Farmer. The following Committee member abstained: Ms. Bain.
VOTE: 4-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-22-0173A, NEAL W. MOGK, M.D., LIC. #17321
Dr. Mogk was present with counsel Doug Lowden.

Board staff summarized that the Board initiated this case after receiving a complaint regarding Dr. Mogk's care and treatment of a 73-year-old male patient ("RS") alleging inappropriate co-prescribing of controlled substances, Soma, Lunesta, and 520 mg of morphine. RS is a 73-year-old male retired police officer with chronic low back, shoulder pain and insomnia. He is a long-term patient of Dr. Mogk's and has had multiple pain treatments including stem cell injections, physical therapy, and chiropractic therapy. The MC determined that Dr. Mogk deviated from the standard of care by inappropriately prescribing high dose opioids, inappropriately prescribing high dose opioids and Soma concurrently, and inappropriately prescribing Soma for long term use without justification. The MC stated the continued long-term use of Soma is not indicated and not appropriate and the dose of opiates was high. SIRC discussed the case and considered the potential harm of Dr. Mogk's prescribing practices to be significant. SIRC observed that the MC found it mitigating that there were multiple attempts to wean opiates and referrals to specialists were made. However, SIRC observed that the case was initiated based on a referral to a pain management physician. SIRC noted that after referring the patient to a pain specialist, Dr. Mogk inappropriately prescribed Soma interfering with the patient's care resulting in the patient being discharged from the pain specialist for non-compliance, which SIRC considered an aggravating factor in this case. SIRC also observed that multiple pain specialists refused to continue Dr. Mogk's treatment regimen. SIRC reviewed Dr. Mogk's CSPMP query history and observed that only one query was performed in 2018; two were performed in 2019, and no queries were performed in 2020. Quarterly queries have been performed since April 2021. SIRC stated that lack of CSPMP queries performed while prescribing high dose opioids and Soma was egregious. Therefore, SIRC sustained an additional violation of A.R.S.§ 36-2606(F). SIRC determined that this case rises to the level of discipline and requires education.

Mr. Lowden provided an opening statement where he informed the Committee that the MC did not find any patient harm but did find a potential for patient harm. RS has remained stable and compliant with no red flags or drug seeking behaviors. Dr. Mogk on occasion does order drug screens for compliance. Dr. Mogk tried to wean this patient down off this protocol and tried other medications that had side effects. The stable dose RS is on still does not provide 100% relief of pain, but Soma is a central component to his pain relief. Mr. Lowden requested that the Committee take non-disciplinary action.

Dr. Mogk provided an opening statement where he explained that he is partial to treating the source of the pain and not treating the pain itself. Dr. Mogk explained that he sent RS to physical therapy, orthopedics, neurology and neurosurgery on several different occasions which showed limited results. Dr Mogk stated that he tried different forms of opioids, but Soma worked the best and RS never displayed addictive behaviors. Dr. Mogk admitted that the CSPMP was a new tool that he had trouble fitting into his daily routine, but eventually worked it out long before a complaint was filed with the Board.

During questioning, Dr. Mogk stated that his patient has never been seen in the Emergency Department for his prescribing regimen. Dr. Mogk stated he has tried to

prescribe amitriptyline to replace Soma, but RS would wake up in pain several times a night. Dr. Mogk explained that he prescribed Soma to treat RS's muscle spasms. Dr. Mogk noted that he never had the chance to speak with the pain specialist about RS as the pain specialist never saw RS. Dr. Mogk confirmed that he still sees RS with the current regimen of medication and noted that RS continues to work full time. Dr. Mogk informed the Committee that he plans to retire this year.

In closing, Mr. Lowden clarified that Dr. Mogk has been treating RS for many years but the first record they found is from October 2009. Dr. Mogk plans on retiring in 2023 and does not have any problems with his license. Mr. Lowden reiterated his request for a non-disciplinary action.

Dr. Moschonas requested clarification on if the pain specialist ever saw RS.

Dr. Mogk stated RS was not seen by the pain specialist who filed the complaint.

Board staff explained that RS was originally referred and seen by a pain specialist. Then discharged from the practice after Dr. Mogk prescribed Soma for muscle spasms when the pain specialist refused to prescribe Soma. Board Staff also noted that the CSPMP was not being used.

Dr. Figge stated that since the CSPMP was not queried is a violation and the justification for Soma is somewhat lacking which is also a violation.

MOTION: Dr. Figge moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a), A.R.S. § 36-2606(F) and A.R.S. § 32-1401(27)(r) for reasons as stated by SIRC.
SECOND: Ms. Oswald.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee members were absent: Ms. Bain and Dr. Farmer.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

Dr. Figge opined that this does not rise to the level of discipline and additional CME would not help. Dr. Figge opined that an Advisory Letter is appropriate.

MOTION: Dr. Figge moved to issue an Advisory Letter for inappropriate prescribing and failure 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.
SECOND: Ms. Oswald.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee members were absent: Ms. Bain and Dr. Farmer.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

H. FORMAL INTERVIEWS

1. MD-22-0303A, EMIL H. ANNABI, M.D., LIC. #37540
   Dr. Annani was present with counsel Kathleen Rogers. Ms. Oswald was recused from this case.

   Board Staff summarized that the Board initiated this case after receiving notification of a malpractice settlement regarding Dr. Annabi's care and treatment of a 59-year-old female patient ("DL") alleging improper performance of a cervical epidural steroid injection resulting in residual right sided pain and weakness. Dr. Annabi performed a third C5-6

cervical epidural steroid injection for chronic cervicalgia, muscle spasms and cervical spondylosis. The procedure was done under propofol sedation with fluoroscopy. Dr. Annabi administered 40 mg Depomedrol and 4 mg dexamethasone. Post-procedure, DL reported itching, pain, and right upper extremity decreased muscle strength. DL was administered fentanyl 100 mcg and Benadryl 50mg for concern for allergic reaction. DL's pain and weakness did not improve. DL was transferred to St. Joseph's Hospital and evaluation showed air and contrast in the central canal as well as in the epidural, subdural and subarachnoid spaces. The MC found that proper informed consent was not documented, heavy sedation was used for the intralaminar cervical epidural steroid injection preventing the patient from reporting pain or paresthesia from incorrect needle placement. The needle placement was at C5-6 increasing the risk of dural puncture and spinal cord trauma. Dr. Annabi failed to recognize the complication of inadvertent spinal cord trauma, the most common neurologic complication of interlaminar cervical epidural steroid injection, when the patient complained of pain and weakness after the procedure. SIRC acknowledged that the MC opined that the level chosen for the injection and the deep sedation contributed to the spinal cord injury. The MC noted that the patient has chronic right upper extremity pain, neck pain, headaches, and permanent right upper extremity weakness; and will need continued care from neurology for the rest of her life. SIRC observed that in his supplemental response Dr. Annabi disagreed with the MC's findings stating that informed consent was obtained, the level of injection and choice of steroids are only guidelines, and the assumption that the symptoms and signs seen post-operatively were due to an allergic reaction was reasonable. The MC reviewed Dr. Annabi's response and stated that an allergic reaction would not have caused pain and/or motor weakness but the symptoms are consistent with a spinal cord injury. SIRC determined this matter rises to the level of discipline.

Dr. Annabi provided an opening statement to the Committee where he opined that this does not rise to the level of discipline. Dr. Annabi informed the Committee of the patient's medical history. Dr. Annabi stated that he discussed the risks and benefits as well as alternatives with the patient and answered all her questions, as he does with all his patients. Due to this discussion a decision was made to proceed with cervical epidural steroid injections with the known risk of nerve damage. The patient underwent two successful cervical epidural steroid injections with relief of pain but not fully. Unfortunately, on the third injection is when the complication occurred. Dr. Annabi stated that he had performed the procedure the same as he had done throughout his entire career. Dr. Annabi informed the Committee of the post-operative complications and hospital care. Dr. Annabi noted that the patient signed two forms of consent since the practice was transitioning to an EMR. Dr. Annabi addressed the MCs comments regarding the needle placement and steroid used. Dr. Annabi informed the Committee that they no longer use any type of sedation due to this case.

During questioning, Dr. Annabi informed the Committee about how he determined that she had radicular symptoms. Dr. Annabi explained that four other more conservative treatments and since there was no improvement that's when we decided to go with cervical epidural steroid injections. Dr. Annabi also explained why he did not choose the cervical transforaminal approach and the decision was made to get a wider spread. Dr. Annabi confirmed that he always informs the patient of the risk that he may hit the spinal cord. With regards to the anesthesia, the patient was able to respond and never lost consciousness. Dr. Annabi explained the use of a series of three epidurals and that he did see the patient prior to each epidural. Dr. Annabi further noted that if there is no improvement, he would not complete the series since there is an inherent risk.

In closing, Ms. Rogers noted that this case came to the Board as a result of a malpractice settlement and that they had experts review this case. Some of the experts were of the opinion that an injection at C5 and C6 was within the standard of care and some experts opined that the injections were not within the standard of care. Ms. Rogers stated that there is not a violation from the standard of care regarding obtaining informed consent and Dr. Annabi has demonstrated during this interview that his conduct of injecting at C5 and C6 and the steroids used were within the standard of care. Ms. Rogers noted that

this was a case where a known complication occurred and that this does not rise to the level of discipline.

During deliberation, Dr. Moschonas stated that the physician addressed the (e) violation by confirming that the absolute risk of spinal cord trauma is in the documentation. Dr. Moschonas recommended moving for an (r) violation regarding harm to the patient.

MOTION: Dr. Moschonas moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(r) for reasons as stated by SIRC.
SECOND: Dr. Bethancourt
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Dr. Farmer. The following Committee member was recused: Ms. Oswald.
VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

Dr. Moschonas commented that everything physicians do when they undertake procedures has some inherent risk and, as long as this is explained to patients and is known that is part of how we practice medicine, he opined that this does not rise to the level of discipline and that given the physician's level of expertise, CME is not needed.

MOTION: Dr. Moschonas moved to issue an Advisory Letter for improperly performing a CESI procedure resulting in residual right sided pain and weakness. 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 Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, and Ms. Bain. The following Committee member was absent: Dr. Farmer. The following Committee member was recused: Ms. Oswald.
VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

I. FORMAL INTERVIEWS

1. MD-22-0414A, TOMAS A. ACUNA, M.D., LIC. #47381
   Dr. Acuna was present with counsel Andrew Plattner. S.H. addressed the Committee during the public statements portion of the meeting. Dr. Bethancourt stated that he knows of the physician, but it would not affect his ability to adjudicate the case.

   Board staff summarized that the Committee is considering this case in which SIRC recommended the issuance of a Letter of Reprimand for providing inadequate outpatient care and treatment to patient AP prior to AP's emergency room intubation and immediate hospitalization two weeks after he initiated care with Dr. Acuna. Dr. Acuna's first and only telemedicine appointment with AP, a thirty-five-year-old healthy male with no pulmonary risk factors, occurred approximately 4 days after the patient's reported onset of a fever and fatigue and the day after AP initially phoned Dr. Acuna's office, seeking an appointment. Dr. Acuna ruled out the likelihood of a Corona virus infection, suspected an upper respiratory virus, and recommended the use of an over-the-counter cough suppressant. The next day, patient AP phoned Dr. Acuna's office with concerns regarding the onset and worsening of wheezing, reported the new development of a truncal and upper extremities rash, and emesis secondary to coughing. Dr. Acuna assured the patient and his spouse that the emesis was likely secondary to a post-nasal drip, vomiting was common after coughing, and Benzonatate was prescribed. Two days later, AP informed Dr. Acuna that AP's nagging cough persisted but may have improved somewhat secondary to the medication prescribed. However, the patient stated that he was having a harder time breathing and he initially noticed this 3 days earlier when he was at the

provider's location and was required to ascend stairs to obtain the Covid test. AP reported that walking to another room in his home now caused him to pant. AP ended his email with the question whether this symptom would resolve or was additional follow-up necessary. The licensee assured the patient that AP's body needed more time to heal but AP should contact him if he developed a fever of 102 degrees that failed to resolve with acetaminophen or ibuprofen. Eight days later, the patient emailed his doctor that he was no longer feverish but had begun to lose his voice over the past few days, his cough persisted, and he noted the onset of a sore throat. AP asked if these symptoms were something he should be concerned about or was there something that he should be doing to resolve the cough. AP informed Dr. Acuna that he was taking Benzonatate and Delsym as the doctor had instructed. Dr. Acuna assured his patient that a cough could linger for several weeks and AP should continue to take the cough suppressants. AP's spouse reported that 6 days later, AP continued to lose his voice, his fatigue was worsening, and he was experiencing difficulties at work because of his increasing inability to participate in online meetings. Approximately three days later, the patient's spouse reported that AP was wheezing, had lost his voice, and was at times struggling to breathe. Thirteen days after AP's telemedicine appointment with Dr. Acuna, AP presented to an emergency room with complaints of coughing, loss of voice, and the sensation that his throat was swelling. AP stated he had felt as if he could not breathe the previous night. Fevers, chest pain, chills, emesis, nausea, and diarrhea were denied. Vital signs were stable and laboratory tests were within normal limits except for eosinophilia; the absolute eosinophil count was nearly four times the normal value. A CT scan with contrast revealed right upper lobe pneumonia with consolidation. The emergency room doctor prescribed antibiotics, described AP's voice as impressively hoarse, and documented that he set strict parameters with the patient and his spouse for conditions in which AP should promptly return to the ER. The patient's spouse stated that she tried to convince her husband to return to the emergency room later that evening but AP wanted to give the antibiotics that he had just received a chance to lessen his symptoms. On the following day, AP gestured to his wife that he was unable to breathe; she phoned 911 and, after discovering that she could not detect a pulse in AP, she initiated CPR. AP was intubated upon arrival at the emergency department. AP's vital signs were significantly outside of the normal range except for his lack of a fever. Valley Fever was suspected, anti-fungal treatment was initiated, and the diagnosis was confirmed the next day. AP was treated for severe sepsis, mental obtundation, pyuria in his urine, acute respiratory failure with hypoxia, and pneumonia. In his submission to the Board, Dr. Acuna explained that he and his associates see patients within 48 hours of the patients' contacts and AP never requested a second appointment though he could schedule his own appointment online. In addition, AP did not appear significantly ill at their sole, online interaction and Dr. Acuna responded to AP's subsequent emails promptly. Finally, there was no indication that AP or his spouse contacted Dr. Acuna as instructed after his first emergency room visit. AP was discharged from that visit at 8:30 pm. The patient presented to the second ER at 11:30 am the following morning, approximately 27 hours after his discharge the evening before.

Dr. Acuna provided an opening statement to the Committee and stated that he understood the gravity of the situation but opined that he has committed an act of unprofessional conduct. AP was scheduled for an appointment as a new patient within 48 hours. He came into the testing clinic and had COVID results within 24 hours. AP established email communication right away and that he only had one phone conversation with AP. Dr. Acuna noted that he promptly responded to all emails within 12 hours. Dr. Acuna informed the Committee of the reported symptoms and the timeline of when AP reported to the ER. Dr. Acuna stated that even the ER did not have suspicion of Valley Fever. Dr. Acuna opined that he treated AP appropriately and did not ignore his symptoms.

During questioning, Dr. Acuna that on March 11th he had the negative rapid COVID result but not the PCR results. Dr. Acuna stated that he thought it was viral but not related to COVID. Dr. Acuna stated he did communicate that it was easy to get an appointment and confirmed that he did not offer him an appointment to see the rash as he thought it was

viral. Dr. Acuna explained that the shortness of breath and fatigue were viral as these symptoms were seen a lot at the time. Dr. Acuna stated that he did not prescribe the steroids and he does not know where AP got them. Dr. Acuna informed the Committee that the last contact he had from AP was from the 27th where he stated that he was feeling better but still had a cough. AP's wife was not in the telehealth visit.

Dr. Figge inquired if there was a picture of the rash or if there was a request to see the rash.

Dr. Acuna explained that he did not see the rash as they did not have that capability. With regards to the wheezing, Dr. Acuna opined that ER physicians and primary care physicians have a different way of practicing and that Albuterol was not his first choice for wheezing. Dr. Acuna stated that having the patient come in to be evaluated would have been the best solution for everything. Dr. Acuna reiterated that the patient had the opportunity to make an appointment at any time.

In closing, Mr. Plattner stated that the patient waited 25 days before going to the ED, which was much further out from the first visit with Dr. Acuna, and the ED did not test for Valley Fever. Mr. Plattner stated that Dr. Acuna's care was adequate and has taken measures to ensure that this will not happen again.

In closing, Dr. Acuna stated that he is making sure to practice defensive care and speaking with patients about how to make appointments, after-hour calls, and communication.

MOTION: Dr. Bethancourt moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(r) for reasons as stated by SIRC.
SECOND: Ms. Oswald.
Dr Bethancourt stated that the physician should have seen the patient quicker and not have been so quick to write it off as viral, however it was not a common time of year for Valley Fever cases and was a viral time of year. Dr. Bethancourt opined that the steroids probably aggravated everything. Dr. Bethancourt stated that he moved for unprofessional conduct since the physician should have picked up soon on the rash and shortness of breath. Dr. Figge agreed and noted that we are seeing this in hindsight. Dr. Moschonas commented that as physicians we have a certain level of concern and if we hear buzz words, we need to determine when the patients need to come into the office and be seen. Ms. Oswald agreed that there is a wonderful policy that a patient can be scheduled within 48 hours, but it is not enough -- if there are changing or worsening symptoms, they need to be seen.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, Ms. Bain, and Ms. Oswald. The following Committee member was absent: Dr. Farmer.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Bethancourt moved to issue an Advisory Letter for failing to reassess and diagnose Valley Fever in a patient presenting with cough, fever, rash, and fatigue. 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. Moschonas.
Dr. Figge stated that he doesn't fault the physician for not testing for Valley Fever, but the physician should have had the patient come in. Dr. Bethancourt stated that the real lesson here is that the physician is the person who makes recommendations and it's the patient's choice to follow it.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Moschonas, Dr. Bethancourt, Ms. Bain, and Ms. Oswald. The following Committee member was absent: Dr. Farmer.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

GENERAL BUSINESS

J. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

K. ADJOURNMENT

MOTION: Dr. Bethancourt moved for adjournment.
SECOND: Dr. Moschonas.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Ms. Bain, Dr. Bethancourt, Dr. Moschonas, and Ms. Oswald. The following Committee member was absent: Dr. Farmer.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at: 3:02 p.m.

Patricia E. McSorley, Executive Director