



Arizona Medical Board

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE B MEETING

Held on Friday, June 9, 2023

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

Committee Members

Lois E. Krahn, M.D., Chair

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

David C. Beyer, M.D., F.A.C.P.

Laura Dorrell, M.S.N., R.N.

James M. Gillard, M.D., M.S., F.A.C.E.P., F.A.A.E.M.

Pamela E. Jones

GENERAL BUSINESS

A. CALL TO ORDER

Dr. Gillard called the Committee's meeting to order at 12:10 p.m.

B. ROLL CALL

The following Committee members were present: Dr. Krahn, Dr. Artz, Dr. Beyer, Ms. Dorrell, Dr. Gillard and Ms. Jones.

ALSO PRESENT

The following Board staff participated in the meeting: Kristina Jensen, Deputy Director; Joseph McClain, MD; Chief Medical Consultant and Michelle Robles; Board Operations Manager. Carrie Smith, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS

D. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

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

E. APPROVAL OF MINUTES

- April 5, 2023 Review Committee B Minutes

MOTION: Dr. Krahn moved to approve the April 5, 2023 Board Review Committee B minutes.

SECOND: Ms. Dorrell.

VOTE: The following Committee members voted in favor of the motion: Dr. Krahn, Dr. Artz, Dr. Beyer, Ms. Dorrell and Dr. Gillard. The following Committee member abstained: Ms. Jones.

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

MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-22-0018A, KIUP A. KIM, M.D., LIC. #42708
Dr. Kim was present with counsel Flynn Carey.

Ms. Smith noted that this formal interview arises from a chart review that was conducted pursuant to a Decree of Censure and Probationary Order. There are ongoing chart reviews and Mr. Carey received the notice of a new chart review and requested a continuance of this formal interview until they are completed. Ms. Smith noted that Board staff has no objection to the request to continue this interview.

Mr. Carey informed the Board that he received a notice letter for another round of reviews and requested that the Board a continuance to a future meeting to make it easier procedurally.

Ms. Smith noted that the SIRC recommendation for this case to complete a PBI medical recordkeeping course with a follow-up program. Dr. Kim has completed the PBI course and has enrolled in the follow-up program so the remediation will be continuing while the investigation continues. Mr. Carey has indicated that they do not have an objection to continuing the current probation until this matter is resolved.

Ms. Carey confirmed that there is no issue with continuing the current probation.

MOTION: Dr. Krahn moved to table the matter.

SECOND: Dr. Artz.

Dr. Beyer requested clarification of the request.

Ms. Smith explained that this case is for two of the four chart reviews that are underway, and the physician's counsel is requesting a continuance to consider all four chart reviews together.

Committee members agreed that this is a reasonable request.

VOTE: The following Committee members voted in favor of the motion: Dr. Krahn, Dr. Artz, Dr. Beyer, Ms. Dorrell, Dr. Gillard and Ms. Jones.

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

MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-22-0753A, DANIEL H. HU, M.D., LIC. #21586
Dr. Hu present with counsel Lisa Bivens and Flynn Carey.

Board staff summarized that the Board initiated this case after receiving notification from the Chief Medical Officer at a Hospital that Dr. Hu's practice had been under scrutiny due to concerns about his compliance with medical record documentation standards. The CMO reported that recently, Dr. Hu underwent a Focused Professional Practice Evaluation consisting of retrospective medical record reviews that found concerns regarding the timing of and completeness of Dr. Hu's documentation for initial history and physical examinations ("H&Ps"). The Board's Medical Consultant ("MC") reviewed the cases and determined that Dr. Hu deviated from the standard of care by not adhering to the Hospital's rules and regulations regarding medical record keeping. Review of the 5 cases provided noted that 4 of the H&Ps were documented after the procedures were completed. The other was done within minutes of initiating the surgery. Based on the rules and regulations at the Hospital, "A legible H&P performed within 30 days of admission is acceptable with an update within 24 hours of registration or admission but prior to surgery or a procedure requiring anesthesia services". Hospital policy requires an OB H&P, to consist of "the prenatal record, where applicable, updated in the EMR by the responsible physician or Advanced Practice Professional". Four of the five cases were elective and the H&P should have been completed well prior to admission. In the fifth case, the patient was admitted at 0831 in labor with the procedure not done until 2000, and again the H&P was not done until the procedure was completed. According to

the MC, allegations of failing to document H&P's prior to, and rationales for performing C-sections, were supported.

Dr. Hu provided an opening statement to the Committee, where he explained that this case consisted of five c-section cases in 2022 and the reason for the c-section was documented in the H&P. Dr. Hu explained that it was his understanding and common practice that the patient's prenatal notes served as the H&P. Dr. Hu noted that it is the common practice for the prenatal record to act as the H&P and that the indication for the c-section can be written after the procedure. Dr. Hu stated that he thought he was following the Hospital policy and acknowledges that this may not be the best practice and he has since completed a CME course. Dr. Hu informed the committee that he has provided the AIR letter to the Board and has integrated a personal protection plan. Dr. Hu confirmed that he now completes an in-person H&P prior to the c-sections.

Ms. Bivens provided an opening statement to the Committee and requested dismissal or an advisory letter for tracking as there was no patient harm.

During questioning, Dr. Hu explained the discrepancy with the H&P and prenatal record. The prenatal record is a chart from his office and gives a timeline of the office visits. When these patients were scheduled to have a c-section the office faxes the prenatal chart over to the hospital to be used as the H&P prior to the procedure. The H&P is a hospital record that should be in the chart explaining why the person was admitted and tell the history to other health care providers if they need to take over care. Dr. Hu stated that the prenatal chart constitutes as the H&P and should be submitted prior to the procedure. Dr. Hu stated that he takes full responsibility for doing the H&P and taking education for providing the best patient care. Dr. Hu further explained that was not aware of the issue with his records until the hospital's investigation.

Board staff confirmed that the cases reviewed in January and February of 2022 occurred after the Letter of Reprimand and Probation went into effect.

Ms. Smith explained that the timeline of the previous Letter of Reprimand and Probation arose from a pattern of behavior prior to 2020 and these cases reviewed by the hospital.

Dr. Hu confirmed that the patient's whole medical history and physical is in the prenatal chart and explained why it is accepted as the H&P. The prenatal charts were all submitted to the hospital and acknowledged by the nurses prior to the c-section. Dr. Hu explained that if the H&P was not in the record then the procedure would not take place as the nurses would catch that.

In closing, Ms. Bivens reiterated what is included in a prenatal chart and the concern is not that the record is insufficient. The issue is whether or not the prenatal chart serves as the H&P per the hospital's policy. Dr. Hu changed his practice once the hospital brought to his attention that they would like him to do something different, which he has now does.

During deliberation, Ms. Dorrell opined that there has been no unprofessional conduct and that this physician has done a great job with remediation with regards to his charts.

MOTION: Ms. Dorrell moved to dismiss.

SECOND: Dr. Beyer.

Dr. Beyer commented that all hospitals have their own bylaws, rules and regulations, and in this situation the physician ran afoul in an area of bylaws that are vague. Dr. Beyer stated that he could understand how one thought it was done correctly and noted that even the nurses had no objection. Dr. Beyer opined that this was good practice and that the obstetrical record is adequate. Dr. Beyer agreed that there is no violation. Dr. Artz appreciated the courses taken and the changes made but did not see anything below the standard of care. Dr. Artz noted that everyone involved thought it was safe to proceed.

Dr. Artz also appreciated that when this change in expectation was brought to him he changed his practice.

VOTE: The following Committee members voted in favor of the motion: all

The following Committee members were absent:

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

MOTION PASSED.

H. FORMAL INTERVIEWS

1. MD-20-0947A, MUHAMMAD A. KHAN, M.D., LIC. #9994
Dr. Khan present with counsel Flynn Carey.

Board staff summarized that the Board initiated this case after receiving a complaint from a former employee of Dr. Khan's with multiple allegations related to Dr. Khan's Surgery and Urgent Care facilities and allegations of inadequate care and treatment of patients. Additionally, the complainant alleged sexual harassment of employees by Dr. Khan. The complainant also noted concerns with Dr. Khan's mental competency as a surgeon with consistent behavior of forgetting and reorganizing. The complainant reported concerns regarding the status of the surgical center which included general clutter and disorganization; rusted, damaged, dented and dull surgical instruments; lack of appropriately sized and type of sutures; expired medications; large biohazard waste container next to oxygen tanks in a room where patients were examined; and no formal policy and procedures for staff or the facility. Board staff referred this complaint to the Arizona Department of Health Services as some of the allegations made by the complainant do not fall within the Board's jurisdiction. Board staff interviewed three employees of the surgical center and/or Urgent Care. The staff members were not able to provide any patient names to Board staff who may have experienced surgical complications. Based on these interviews and Board staff's attempts to contact a former employee, Board staff also did not find any evidence of sexual harassment of employees by Dr. Khan. Regarding the quality-of-care allegations made by the complainant, Board staff confirmed with the complainant that he did not have specific patient names to provide to the Board for review. Board staff then requested a log of surgical patients seen by Dr. Khan during the time frame that the complainant was employed by the surgery center. Board staff selected three patients from the log for review by a MC who identified deviations from the standard of care related to inadequate documentation, review of informed consent, and review of pathology results. On October 27, 2021, this case came before the Board during the teleconference meeting for consideration of SIRC's recommendation for an Advisory Letter and Order for Non-Disciplinary CME for inadequate documentation. Board members discussed the case and inquired about the need for a site inspection based on allegations of improper use of equipment. It was recommended to refer the case to the Arizona Department of Health Services (DHS). Board members also discussed the allegations involving competency concerns and safety concerns at the surgery center. Board members ultimately voted to return the case for further investigation to address the issues regarding the surgery center. In response to the complainant's concerns with Dr. Khan's mental competency as a surgeon, Dr. Khan's attorney, Mr. Carey stated that there are no mental competency issues in this case and no evidence that Dr. Khan is unfit to practice. Board staff re-reviewed the complaint when this case was sent back by the Board for further review and noted that the complainant did not mention specific issues related to the clinic. Board staff deferred to ADHS site inspection findings. Board staff obtained a copy of ADHS' inspection reports for the surgery center and noted several citations which required remediation through plans of corrections and a civile penalty of \$2,000. Board staff noted that some of the complainant's allegations specific to the surgery center and the urgent care were addressed by ADHS. SIRC discussed the ADHS site inspection results which identified a failure to provide trained and qualified personnel, failure to ensure the confidential storage of records, failure to have consents for pain procedures and inadequate documentation of injection sites, failure to ensure supplies were dated and discarded when expired, improper storage of medications including controlled substances, and improper storage of equipment. ADHS also identified various administrative violations

related to policies and procedures, which had not been updated since 2009. SIRC determined that violations of A.R.S. § 32-1401(27)(r) and A.R.S. § 32-1401(27)(jj) should be sustained due to the conduct identified by ADHS and potential risk to the public. SIRC observed that Dr. Khan completed PACE's Medical Recordkeeping course in November 2021. SIRC also observed that ADHS confirmed receiving acceptable plans of correction for the two facilities as of April 2022. SIRC stated that the violations identified by ADHS are concerning with regard to Dr. Khan's ability to appropriately manage multiple facilities with various licensure regulations, which appeared to have been overlooked by Dr. Khan. SIRC remained concerned with the breadth of violations related to Dr. Khan's failure to appropriately manage his clinics including the inadequate supervision and support of clinical subordinates and support staff and the repetitive deviations related to inadequate documentation. In regard to Mr. Carey's position that ADHS did not list any individual act performed by Dr. Khan relating to the ADHS deficiencies, Board staff will note that the ADHS Enforcement Actions Report lists that the Surgery Center and Dr. Khan were assessed a civil penalty of \$2000 in April 2022. No other partial owner or physician is named in this report. It further documents that Dr. Khan agreed to pay the civil penalty due to the administrator's failures.

Mr. Carey provided an opening statement to the Committee and noted that Dr. Khan has completed the PProBE course and his essay is being reviewed.

During questioning, Dr. Khan informed the Committee regarding the ownership structure of the different facilities and services. Dr. Khan confirmed that he provides surgical care and explained that once the ADHS report came back, he made changes to ensure compliance. Dr. Khan informed the Committee of what he learned from the PACE records course and what medical records should include. Dr. Khan explained what occurred that led to the disgruntled employee's situation and stated that although he is not happy with the situation Dr. Khan assured that the center is working towards addressing the compliance concerns. Dr. Khan noted that they now have an onsite compliance officer and a consultant to monitor compliance.

In closing, Mr. Carey noted that as soon as the compliance issues arose Dr. Khan attempted to correct them and the ADHS process worked. Dr. Carey requested that the Committee issue a non-disciplinary resolution in this case.

During deliberations, Dr. Beyer opined there has been unprofessional conduct in violation of A.R.S. §§ 32-1401(27)(e), (r), and (jj).. Dr. Beyer opined that it is clear that the physician has the authority at the surgery center to make the appropriate changes regarding the concerns raised. Dr. Khan had an obligation to identify and fix those problems prior to someone coming in and finding them. The issues regarding consents, expired medication, radiation exposure and supervision of narcotics are well within the physician's obligation to identify and correct as they directly relate to patient care.

MOTION: Dr. Beyer moved for a finding of unprofessional conduct in violation of A.R.S. §§ 32-1401(27)(e), (r) and (jj) for reasons as stated by SIRC.

SECOND: Ms. Jones.

VOTE: The following Committee members voted in favor of the motion: Dr. Gillard, Dr. Artz, Dr. Beyer, Ms. Dorrell and Ms. Jones. The following Committee member was absent: Dr. Krahn.

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

MOTION PASSED.

Dr. Beyer expressed concern about the physician's history with the Board but noted that it is not connected to the current problem. Dr. Beyer stated that the physician has been proactive in remediation of this problem and opined that an Advisory Letter without CME is appropriate. Dr. Beyer noted that the CME has already been completed.

MOTION: Dr. Beyer moved to issue an Advisory Letter for inadequate medical records, inadequate supervision of licensed health care employees and for

deficiencies identified by DHS inspection that may impact patient care at facilities for which respondent was in a position of authority. While the licensee has demonstrated substantial compliance through rehabilitation or 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. Jones.

Ms. Jones spoke in favor of a Letter of Reprimand. Dr. Artz acknowledged that the physician has taken courses to address the violation, however, with regards to the § 32-1401(27)(j) violation it is unclear how he's responsible for the business side spoke against that portion of the advisory letter. Dr. Beyer opined that Dr. Khan does bear some responsibility and therefore should be a part of the findings. Ms. Jones opined that as one of two owners Dr. Khan bears a responsibility for the patients and employees at this facility. Ms. Jones applauded the physician for the changes made but he is ultimately responsible for the consent forms, medications, and expired drugs.

VOTE: The following Committee members voted in favor of the motion: Dr. Beyer, Ms. Dorrell and Dr. Gillard. The following Committee members voted against the motion: Dr. Artz and Ms. Jones. The following Committee member was absent: Dr. Krahn.

VOTE: 3-yay, 2-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

I. FORMAL INTERVIEWS

1. MD-22-0243A, ARMANDO GONZALEZ, M.D., LIC. #24499
Dr. Gonzalez was present without counsel.

Board staff summarized that in March of 2022, the Board received notification from the Arizona State Board of Pharmacy that Dr. Gonzalez had been non-compliant with the use of the CSPMP System from October 2021- December 2021, prescribing a total of 318 opioid prescriptions and 168 benzodiazepine prescriptions with zero CSPMP queries. Board staff also determined that after receiving notification, Dr. Gonzales performed queries on 13 patients, although he provided 280 controlled substance prescriptions to 155 patients during that time frame. Board staff selected three patients for further review based on Dr. Gonzalez' Controlled Substance Prescription Monitoring Program ("CSPMP") profile. NS is a 69-year-old male was followed by Dr. Gonzalez since 2016 for treatment of chronic pain. NS was seen every 3-4 weeks and a urine drug screen (UDS) done August of 2017 was positive for alcohol metabolites in addition to prescribed opioids. NS's BP improved when NS became compliant with BP meds. NS also received regular Depo-Testosterone injections in the office. A UDS done in June of 2018 was positive for Methadone, but negative for Fentanyl. Subsequent yearly UDSs were consistent but did not appear to include ETOH metabolites. In spite of documented concerns regarding the large opioid doses prescribed, there were no attempts to wean narcotics, no pain management referral, no Narcan prescription, and no CSPMP review, although intermittent documentation noted assessment of the Prescription Drug program. RC is a 59-year-old male with chronic pain followed by Dr. Gonzalez since 2016. UDSs were done 1-2 times per year from 2019-2021 were consistent. There were no attempts to wean opioids, no CSPMP review, and no provision of Narcan. Patient LH is a 56-year-old female followed by Dr. Gonzalez since 2016. UDS testing in September of 2020 was negative for Oxycodone and Alprazolam. A subsequent UDS in February of 2021 was positive for Oxycodone and negative for Alprazolam. UDS testing in November of 2021 was positive for Oxycodone and Negative for Alprazolam. The November UDS was also positive for Marijuana, which was not addressed. LH underwent a right total hip replacement in late March of 2022. The CSPMP was not queried, although progress notes documented assessing the Prescription Drug Program. Regarding NS, the MC stated that Dr. Gonzalez deviated from the standard of care by prescribing high dose opioids without justification, failing to query the CSPMP prior to prescribing controlled substances, failing to obtain quarterly UDSs, failing to refer the patient to pain management and by failing to prescribe Narcan. Regarding patient RC, the MC stated

that Dr. Gonzales deviated from the standard of care by prescribing high dose opioids without justification, prescribing high dose opioids and BZDs concurrently, failing to query the CSPMP, failing to perform UDSs quarterly and failing to prescribe Narcan. Regarding patient LH, the MC determined that Dr. Gonzales deviated from the standard of care by prescribing high dose opioids without justification, prescribing high dose opioids and BZDs concurrently, failing to query the CSPMP, failing to perform quarterly UDSs and failing to address aberrant UDSs. Dr. Gonzales was offered an Interim Consent Agreement for a Practice Restriction prohibiting controlled substance prescribing pending the outcome of a Formal Interview, which he signed on March 3, 2023. The Practice Restriction went into effect on March 9, 2023. Dr. Gonzales completed the PBI Opioid Prescribing and Pain Management Course on March 25-26, 2023 along with the PBI Medical Record Keeping Course.

Dr. Gonzalez provided an opening statement to the Committee, where he agreed with the Board's findings and noted that he already completed the recommended courses on how to properly prescribe medications and for medical record keeping. Dr. Gonzalez informed the Committee that most of his patients are hardworking patients who deal with pain and his goal is to allow them to get through their day and to continue working.

During questioning, Dr. Gonzalez explained that since signing the Interim Practice Restriction he has referred the patients who agreed to see pain management. Some patients have refused referrals, and some have gone and returned saying it doesn't work. Dr. Gonzalez stated that there is no excuse for not querying the CSPMP, and in retrospect he should have. Dr. Gonzalez opined that the courses he took were very eye opening and that he should be querying the CSPMP when prescribing narcotics and should not be mixing narcotics and analytics.

Dr. Gillard expressed concern that Dr. Gonzalez was given a warning and still failed to query the CSPMP.

Dr. Artz inquired about what other tools other than ibuprofen is available to treat these patients.

Dr. Gonzalez explained that if the only thing he can prescribe is ibuprofen, then he will. Dr. Gonzalez explained that his patients sign a consent form regarding the rules prior to prescribing narcotics. Dr. Gonzalez stated that he does not give narcotics to patients under the age of 50 or on their first visit. Most of these patients have gone to pain management prior to seeing him and a lot of it has to do with their copays for other modes of treatment.

Dr. Gonzalez stated that his goal is to manage his patients' pain as best as he can so that they can have a quality of life. Dr. Gonzalez confirmed that he will query the CSPMP every time and that the CSPMP is used to ensure a patient is not double dipping.

During deliberations, Dr. Gillard opined that there has been unprofessional conduct.

MOTION: Dr. Gillard moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a) for violating A.R.S. § 36-2606(F), as well as A.R.S. §§ 32-1401(27)(e) and (r) for reasons as stated by SIRC.

SECOND: Ms. Jones.

VOTE: The following Committee members voted in favor of the motion: Dr. Gillard, Dr. Artz, Dr. Beyer, Ms. Dorrell and Ms. Jones. The following Committee member was absent: Dr. Krahn.

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

MOTION PASSED.

Dr. Gillard noted that the physician has completed the course work but there is still a concern that he continued to not query the CSPMP and a concern regarding his prescribing and therefore opined that this rises to the level of a Letter of Reprimand. Dr.

Gillard recommended lifting the practice restriction but noted that if issues continue it can result in further Board action.

MOTION: Dr. Gillard moved for draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Two Year Probation for Chart Reviews. Within thirty days, the physician shall enter into a contract with a Board approved monitoring company to conduct periodic chart reviews at his expense. After three consecutive favorable chart reviews, Dr. Gonzalez may petition the Board to terminate the Probation. Dr. Gonzalez shall not request early termination of Probation without having completed the chart review process. Additionally, Dr. Gillard moved to direct Board staff to lift the interim practice restriction.

SECOND: Ms. Dorrell.

Dr. Beyer spoke against the motion as is but spoke in favor of lifting the practice restriction and issuing a Letter of Reprimand. Dr. Beyer noted that the CME that has already been taken does meet that term of probation but opined that chart reviews are still required to ensure that his practice has changed in an appropriate way.

VOTE: The following Committee members voted in favor of the motion: Dr. Gillard, Dr. Artz, Dr. Beyer, Ms. Dorrell and Ms. Jones. The following Committee member was absent: Dr. Krahn.

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

MOTION PASSED.

CONSENT AGENDA

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

1. MD-19-1018A, PAUL A. AUPPERLE, M.D., LIC. #30485

MOTION: Dr. Krahn moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and License Reactivation with Five Year Probation to participate in PHP with terms consistent with the PHP Contractor's and PACE's recommendations. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Aupperle's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.

SECOND: Dr. Beyer.

VOTE: The following Committee members voted in favor of the motion: Dr. Krahn, Dr. Artz, Dr. Beyer, Ms. Dorrell and Dr. Gillard. The following Committee member was abstained: Ms. Jones.

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

MOTION PASSED.

GENERAL BUSINESS

K. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Krahn requested that the interviews not be scheduled so far apart to prevent gaps between the interviews.

L. ADJOURNMENT

MOTION: Ms. Jones moved for adjournment.

SECOND: Dr. Artz.

VOTE: The following Committee members voted in favor of the motion: Dr. Gillard, Dr. Artz, Dr. Beyer, Ms. Dorrell and Ms. Jones. The following Committee member was absent: Dr. Krahn.

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

MOTION PASSED.

The meeting adjourned at 3:19 p.m.



Pat E McSorley

Patricia E. McSorley, Executive Director