



Arizona Medical Board

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE A MEETING Held on Tuesday, February 6, 2024 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.R., F.A.S.T.R.O.
Laura Dorrell, M.S.N., R.N.
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: 12:55 p.m.

B. ROLL CALL

The following Committee members were present: Dr. Figge, Dr. Bethancourt, Ms. Dorrell, and Dr. Farmer.

The following Committee members were absent: Dr. Moschonas and Ms. Oswald.

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

Gary R. Figge, M.D., Chair

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

- December 8, 2023 Review Committee A Minutes; including Executive Session

MOTION: Dr. Farmer moved to approve the December 8, 2023 Review Committee A minutes; including Executive Session.

SECOND: Dr. Figge.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge and Dr. Farmer. The following Committee members abstained: Dr. Bethancourt and Ms. Dorrell. The following Committee members were absent: Dr. Moschonas and Ms. Oswald.

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

MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-22-0882A, DEREK Y. KUNIMOTO, M.D., LIC. #35196
Dr. Derek Kunimoto was present with council Megan Gailey.

Board staff summarized that the Board initiated case number MD-22-0882A after receiving a complaint regarding Dr. Kunimoto's care and treatment of a 67-year-old female patient ("SM") alleging failure to appreciate the signs of a medical emergency and failure to immediately evaluate and treat the patient's left eye blindness following an injection. On September 11, 2020, SM had an intravitreal injection of Avastin in both eyes for wet age-related macular degeneration by Dr. Kunimoto. Two days later, on Sunday, the patient called reporting she had gone blind in her left eye. Dr. Kunimoto called the patient, obtained a history, and advised her to present to the office the next day. Dr. Kunimoto diagnosed uveitis of the left eye and recommended surgery which was done the same day. Dr. Kunimoto performed a vitrectomy, laser membrane stripping, steroid injection, and intravitreal antibiotics, and obtained a culture that was later reported positive for enterococcus faecalis confirming endophthalmitis and a retinal detachment. The patient was left with total vision loss in her left eye. The Board's Medical Consultant ("MC") reviewed the case and determined that Dr. Kunimoto deviated from the standard of care by failing to timely evaluate and treat a patient with vision loss for a possible infection following an intraocular injection. Dr. Kunimoto presented letters from two retinal specialists who stated he met the standard of care.

Dr. Kunimoto opined that SM received treatment for Endophthalmitis in a reasonable timeframe. Dr. Kunimoto noted that SM had a rare case of Endophthalmitis.

MOTION: Dr. Figge moved to dismiss the case.

Dr. Bethancourt opined that he did not see any risky behavior on the physician's part and spoke in favor of the motion.

SECOND: Dr. Bethancourt.

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

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

G. FORMAL INTERVIEWS

1. MD-22-0812A, RAM SUBBUREDDIAR, M.D., LIC. #30466
Dr. Ram Subbureddiar was present with council Michele Thompson.

Board staff summarized that SIRC determined that Dr. Subbureddiar deviated from the standard of care in his failure to appropriately evaluate patient (ND's) repeatedly elevated liver enzymes, maintain appropriate medical records, and his long-term prescribing of morphine with the benzodiazepine, and Valium. ND initially presented in December 2016. During the approximate five years of Dr. Subbureddiar's care of ND, the patient frequently presented to emergency rooms and received diagnoses of severe dehydration, severe deconditioning, elevated liver enzymes, weakness, abdominal pain, hyperkalemia, and acute kidney failure. Based upon the provided documentation, elevated liver enzymes were not rechecked in the office visits following these ER admissions. Labs were ordered by Dr. Subbureddiar in January 2017; December 2017; March 2018; and November 2020; these revealed multiple and repeated lab abnormalities in HgbA1c, liver and kidney function, and occasionally cholesterol and lipid levels. No discussions with ND regarding alcohol use were documented. The possible consideration of hepatitis A, B, or C as possibly related to abnormal liver enzymes was never documented. The physical exam portions of Dr. Subbureddiar's office exams were identical, even with varying chief complaints, and failed to provide appropriate information regarding the reasoning for

long-term narcotic and benzodiazepine use. In August 2021, September 2021, and January 2022, ND's chief complaint was one of increasing weakness; in the January 2022 visit, ND specified that he could no longer walk very far. ND presented one month later and Dr. Subbureddiar documented that labs showed elevated AST and ALT levels but ND was asymptomatic so the labs would be repeated. No lab results were provided in the submitted office records. In April 2022, ND was admitted to the hospital via the ER and was diagnosed with Hepatitis C and Cirrhosis; he died ten days later. The MC stated that Dr. Subbureddiar failed to adhere to the United States Preventative Services Task Force (USPSTF), guidelines for Hepatitis screening. Board staff noted that the CDC's guidelines regarding hepatitis testing were also not followed.

Ms. Thompson provided an opening statement to the Committee and stated that this is case is regarding a documentation issue. Dr. Subbureddiar has since made changes to address this issue. The doctor did offer this patient a Hepatitis C screening, but the patient declined. Ms. Thompson agreed that this discussion was not documented and that is an error on Dr. Subbureddiar's part. Ms. Thompson stated that Dr. Subbureddiar followed the guidelines for screening all patients for Hepatitis C, whether at high risk or not. Ms. Thompson noted that the patient had a history of noncompliance. Ms. Thompson agreed that CME for recordkeeping is appropriate in this case but disagreed with this issuance of discipline.

During questioning Dr. Subbureddiar stated that he ordered a Hepatitis C test three times, but the patient declined all three times. Dr. Subbureddiar explained that ND reported that he drank and this was the reason for the LFTs being high. Dr. Subbureddiar noted that when he informed ND that a Hepatitis C test was warranted due to the elevated LFTs, ND stated that they will continue to be elevated due to drinking for 10 years. Dr. Subbureddiar further noted that ND's LFTs would return to normal after 48 hours of being admitted to the hospital and that he has documented this observation. If ND had Hepatitis C, his LFTs would not normalize after 48 hours of not having a drink. Dr. Subbureddiar informed the Committee that ND did not have a history of risky behaviors to contract Hepatitis C. Dr. Subbureddiar explained that ND was taking opioids and benzodiazepines together for back and leg pain and anxiety. Dr. Subbureddiar noted that he also referred ND to a rheumatologist for positive rheumatoid factor. The rheumatologist stated ND had fibromyalgia and recommended physical therapy for treatment which included treating his back pain. Dr. Subbureddiar explained that he ordered a Hepatitis C test during ND's last hospital admission. ND had altered mental status because of hepatic encephalopathy and could not refuse the test. Dr. Subbureddiar agreed that the medical records were lacking information and that is the reason why he is in front of the Board regarding this case.

In closing, Dr. Subbureddiar informed the Committee of the changes that he has since made to his documentation. Dr. Subbureddiar explained that he documents everything during visits and requests that every patient with elevated liver enzymes to complete a Hepatitis C test.

In closing, Ms. Thompson agreed that if the documentation is not there it is difficult to evaluate clinical care. Ms. Thompson further stated that the physician agreed that he would benefit from CME on recordkeeping.

During deliberations Dr. Bethencourt opined that there has been unprofessional conduct. Dr. Subbureddiar lacked documentation in his medical records and the records did not state Hepatitis C was a concern nor did they state where ND had chronic pain.

MOTION: Dr. Bethencourt 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. Farmer.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Bethencourt, Ms. Dorrell, and Dr. Farmer. The following Committee members were absent: Dr. Moschonas and Ms. Oswald.

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION: Dr. Bethancourt moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person (virtual) course regarding medical recordkeeping; complete no less than the 15 hour of Board staff pre-approved Category I CME in an intensive, in-person (virtual) course regarding controlled substance prescribing, and complete no less than 5 hours of Board staff pre-approved Category I CME in the diagnosis and treatment of liver disease. The CME hours shall be in addition to the hours required for license renewal. The Probation shall terminate upon proof of successful completion of the CME coursework.

SECOND: Dr. Farmer.

Dr. Farmer spoke in favor of 10 hours of medical record keeping and opioid prescribing. Dr. Bethancourt agreed that CME regarding recordkeeping, the evaluation of liver disease, and opioid and substance abuse was appropriate.

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

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

H. FORMAL INTERVIEWS

1. MD-21-0471A, JEDIDIAH J. MALAN, M.D., LIC. #43272

Dr. Jedidiah Malan was present with council Melissa Cuddington.

Board Staff summarized that this case was initiated after receipt of Dr. Malan's self-report of an arrest and criminal charges stemming from a domestic violence incident that occurred on January 11, 2021. As a result of the incident, Dr. Malan was incarcerated from January to March 2021. Once out on bail, Dr. Malan entered and completed treatment. Dr. Malan voluntarily surrendered his Alaska license. On February 18, 2022, the Washington Board summarily suspended Dr. Malan's license. On August 4, 2023, the Washington Board indefinitely suspended Dr. Malan's license. Since October 3, 2022, Dr. Malan has been participating in the Alaskan PHP with quarterly reports sent to Arizona. In April 2023, Dr. Malan underwent a PHP Assessment with one of the Board's PHP Assessors. The PHP Assessor made recommendations to include 5 years of PHP monitoring. On October 2, 2023, Dr. Malan's attorney reported that Dr. Malan is currently on probation and in the process of completing his community service, which was due to be completed in December 2023. Dr. Malan failed to timely disclose being charged with multiple felonies and two misdemeanors related to the domestic violence incident. Dr. Malan pled guilty to a class C felony and was ordered to five years of incarceration with 42 months suspended, issued a fine, and probation for 5 years. Dr. Malan has no prior Board history and has been compliant under the Alaskan PHP monitoring.

Ms. Cuddington provided an opening statement to the Committee and stated that Dr. Malan self-reported the criminal charges. Dr. Malan wishes to relocate to Arizona and find a full-time radiology employment. Ms. Cuddington noted that Dr. Malan is currently on probation for the criminal charges and is enrolled in the Alaskan PHP monitoring program for five years. Dr. Malan has shown that he can be regulated and the Board approved evaluator stated that Dr. Malan is safe to practice while being monitored in a 5-year agreement. Ms. Cuddington requested that Dr. Malan be placed on a 5-year monitoring agreement.

During questioning Dr. Malan stated that his lapse in judgment was due to drinking. Dr. Malan informed the Committee that treatment has helped him express his emotions and learn how to control them. Dr. Malan stated that while using healthy coping mechanisms he no longer drinks. Dr. Malan confirmed that he signed a voluntary suspension with the Alaskan Board and does not have an active license. Dr. Malan informed the Committee

of the Alaskan PHP program and the therapeutic portion of treatment. Dr. Malan stated that he has completed a domestic abuse treatment program that coincides with the alcohol treatment program. Dr. Malan stated that he has completed 100 hours of Continuing Medical Education in Radiology and he would like to look for full-time employment in Arizona if he had an active license. Dr. Malan confirmed that he is able to work and live outside of Alaska while on probation but noted that he is required to go back to Alaska every 30 days for a full 24 hours.

In closing, Ms. Cuddington stated that Dr. Malan is willing to relocate to Arizona and enroll in Arizona's PHP program.

MOTION: Dr. Farmer moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a) A.R.S. § 32-3208(A), (d), (f) and (p) for reasons as stated by SIRC.

SECOND: Dr. Bethancourt.

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

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

Dr. Farmer opined that Dr. Malan would need to be monitored if granted a license. Dr. Farmer noted that there has not been a reoccurrence but expressed concern regarding the gap in practice. Dr. Bethancourt noted that Dr. Malan's knowledge in education and training in Radiology is extensive. Dr. Bethancourt stated that he has no concerns about Dr. Malan practicing radiology but spoke in favor of a proctor.

Ms. McSorley noted that the Committee can require chart reviews or a proctor to monitor Dr. Malan's readings.

Committee members discussed the number of chart reviews that would be required for a quality review.

Board staff confirmed that physicians practicing in Arizona need to be enrolled in the Arizona PHP program. The PHP program would be a full 5 years with early release if petitioned and approved. If the physician teleworks from Alaska, he would need to request that the Alaskan Board continue to send quarterly reports, and internal monitoring for compliance. If the physician was non-compliant a new investigation would commence.

MOTION: Dr. Farmer moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Five-Year Probation to participate in PHP with terms consistent with the PHP Contractor's recommendations. Dr. Malan shall be required to utilize a Board-approved proctor to overread 5% of his patients, at his expense. Dr. Malan shall cause the practice proctor to submit monthly reports to the Board, at his expense. After three months, Dr. Malan may petition the Board to request that the Proctor requirement be terminated. The request to terminate the proctor requirement shall be accompanied by documentation from the proctor supporting the termination. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Malan's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.

SECOND: Dr. Bethancourt.

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

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

CONSENT AGENDA

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

1. MD-21-0972A, TODD K. MALAN, M.D., LIC. #34046

MOTION: Dr. Farmer Moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation with Reimbursement. Dr. Malan shall reimburse the patient within ninety days via certified funds in the amount of \$14,900. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Malan's request for termination shall be accompanied by proof of payment.

SECOND: Dr. Figge.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, and Dr. Farmer. The following Committee members abstained: Dr. Bethancourt and Ms. Dorrell. The following Committee members were absent: Dr. Moschonas and Ms. Oswald.

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

MOTION PASSED.

GENERAL BUSINESS

J. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Farmer congratulated Dr. Figge on conducting his first meeting as chair.

K. ADJOURNMENT

MOTION: Dr. Farmer moved for adjournment.

SECOND: Ms. Dorell.

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

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

The meeting adjourned at 2:59 p.m.



A handwritten signature in black ink, reading "Patricia E. McSorley", written over a horizontal line.

Patricia E. McSorley, Executive Director