



Arizona Medical Board

1740 W. Adams St., Suite 4000 • Phoenix, Arizona 85007

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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 Wednesday, June 5, 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.

GENERAL BUSINESS

A. CALL TO ORDER

Chairman Figge called the Committee's meeting to order at: 12:07 p.m.

B. ROLL CALL

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

The following Committee member participated virtually: Dr. Farmer.

ALSO PRESENT

The following Board staff participated in the virtual meeting: Raquel Rivera, Interim Deputy Director; Nicole Samaradellis, Interim Investigations Manager and Michelle Robles, Board Operations Manager. 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

- April 5, 2024 Review Committee A Minutes

MOTION: Dr. Moschonas moved to approve the April 5, 2024 Review Committee A Meeting.

SECOND: Dr. Bethancourt.

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

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

MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-21-0254A, MANISH B. PATEL, M.D., LIC. #43463

Dr. Patel was present with Counsel Flynn Carey.

Board staff summarized this case was initiated after receiving a self-report from Dr. Patel following a Medicare audit and subsequent employer's audit that involved the adequacy of the documentation for Dr. Patel's patient encounters and the insurance claims submitted. The audit revealed that Dr. Patel lacked supporting clinical notes for patient encounters based on a random selection of encounters from 2015 to 2020. In his response to the investigation, Dr. Patel admitted to the medical record omissions of medical documentation for patients he "rounded on" at a subacute SNF. Dr. Patel admitted that he failed to document an encounter note when there was no change in the patient's circumstance.

Dr. Patel provided an opening statement and acknowledged the failure to document, but stated that this was not malicious.

During questioning, Dr. Patel explained that at the time he was seeing the patient and providing care so he didn't realize that he was not meeting the standard. Dr. Patel stated that he learned from the PACE course that documentation is important regarding patient care, family communication and billing. Dr. Patel confirmed that this was self-reported and that this was done by an internal audit. Dr. Patel confirmed that he paid back Medicare for everything that he did not document and that any insurance company that he billed that he did not document on was paid back.

Mr. Carey provided a closing statement and spoke against the issuance of a Letter of Reprimand. Mr. Carey stated that there was no allegation of fraud and no evidence that Dr. Patel did not see the patients. The internal audit showed that he did see these patients but that there was no documentation. There was no patient harm, and this has been mitigated with a substantial payment amount. The audit was retrospective and involved cases from 5 to 9 years ago. Mr. Carey noted that Dr. Patel has had no other complaints and no other issues with documentation. Dr. Patel self-reported this to the Board to review and adjudicate. Mr. Carey reported that Dr. Patel has completed the PACE course and requested the issuance of an Advisory Letter in this case.

During deliberations, Dr. Moschonas opined that if it's not documented then you didn't do it. Dr. Moschonas opined that there was no malice here and that Dr. Patel took ownership of the entire process. Dr. Patel paid back the entire amount. Dr. Moschonas noted that the number of patients was egregious but opined that Dr. Patel has learned from this and took steps to remediate. Dr. Moschonas opined that there was a violation that Dr. Patel failed to maintain medical records.

MOTION: Dr. Moschonas moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(e) 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, Dr. Farmer and Dr. Moschonas.

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

MOTION PASSED.

Dr. Moschonas opined that an advisory letter is appropriate as the physician has learned from this.

MOTION: Dr. Moschonas moved to issue an Advisory Letter for failure to maintain adequate documentation. 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: Dr. Bethancourt.

Dr. Farmer opined that the volume of the offense was not a good pattern of practice. Dr. Farmer agreed that it is mitigating that it was self-reported and that the amount was paid back. Dr. Bethancourt stated that he does not understand how a physician would not know that he needs to document everything and to bill for a visit that wasn't documented. Dr. Bethancourt opined that self-educating without the Board mandating it is mitigating. Dr. Figge agreed that this was egregious but found it mitigating that there was an internal audit and insurance was reimbursed. Dr. Figge commented that the advisory letter will serve as tracking purposes if this happens again.

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

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

MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-19-1116A, RAHUL MALHOTRA, M.D., LIC. #32305

Dr. Malhotra was present with Counsel Flynn Carey.

Board staff summarized regarding the quality-of-care issues; that the Board initiated case number MD-19-1116A after receiving a complaint that a radiology practitioner assistant (RPA) independently performed procedures without Dr. Malhotra present. The MC, an interventional radiologist, found that Dr. Malhotra did not meet the standard of care in caring for four patients with varicose veins specifically as it pertains to procedural documentation (especially informed consent) and image archiving. The MC stated that the consent forms at best were incomplete. In addition, this MC found that images from multiple ultrasound studies could not be found.

Mr. Carey provided an opening statement to the Committee and stated that regarding the RPA issue, the relationship with that RPA ended in 2019. There were a number of hospitals and other practitioners who believed the use of this RPA was a permitted practice. Mr. Carey informed the Committee that Dr. Malhotra has bought a new imaging system, completed 32 hours of CME in professionalism and ethics, has a new informed consent policy and revamped the entirety of his practice to meet best practices.

Dr. Malhotra confirmed that they have made obtaining the informed consent an action item and explained the system in place to ensure that the consent is there. Dr. Malhotra stated that they have modified and updated all the practice's policies in 2023. Dr. Malhotra stated that he billed under his name for these procedures instead of the RPA since he was supervising every patient, seen the patient and created an action plan and the RPA did the procedure. Dr. Malhotra stated that he thought it was appropriate since he was supervising. Dr. Malhotra stated that there was no intent of fraud. Regarding the imaging studies, Dr. Malhotra clarified that they did not lose the images. The images were still viewable and good enough for diagnosis, but some of the videos did not play. Dr. Malhotra informed the Board that they now have the correct system in place to store imaging. Dr. Malhotra explained that the patient knew the procedure was being completed by a midlevel provider and there was no intent to deceive. Dr. Malhotra stated that the medical records course and ethics course were very helpful. Dr. Malhotra informed the Committee of the various changes that have been made to his practice.

During deliberations, Ms. Dorrell opined that there has been unprofessional conduct. Ms. Dorrell commented that there are mitigating factors in this case. There were no bad outcomes and a change in how the practice is run. Ms. Dorrell further opined that the billing violation was not intentional and that there was no malicious intent. Dr. Figge stated that he would include the A.R.S. § 32-1401(27)(v) and (w) violations since a

charge was billed and rendered. Dr. Figge stated that the charge did occur and whether there was malicious intent is a different matter.

MOTION: Ms. Dorrell moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a (A.R.S. § 12-2297(A)(1)(3)), (e), (r), (v), (w), (dd) and (jj) for reasons as stated by SIRC.

SECOND: Dr. Farmer.

Dr. Bethancourt struggled with the physician's interpretation of his role and the RPA. Dr. Bethancourt stated that even though he evaluated the patient and determined what needs to be done but the RPA did the procedure he should not have signed under his name. Dr. Bethancourt opined that there wasn't a fraudulent intent but a misinterpretation of what is supposed to be done. Dr. Figge stated that he is convinced that there was no malicious intent, but it did happen.

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

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

MOTION PASSED.

Ms. Dorrell opined that this does not rise to discipline given that this was not a patient complaint, there have been mitigating factors and a change has been made to the way the practice is run.

MOTION: Ms. Dorrell moved to issue an Advisory Letter for failing to retain medical records, inadequate documentation; charging a fee for services not rendered, obtaining a fee by misrepresentation, and for maintaining a professional connection with an RPA who was inadequately supervised and permitted to perform procedures. 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: Dr. Farmer.

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

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

MOTION PASSED.

H. FORMAL INTERVIEWS

1. MD-22-0476A, MICHAEL R. GRAY, M.D., LIC. #11623
Dr. Gray was present with Counsel Michael Lazarow.

Dr. McClain summarized that on May 11, 2022, the Board received an online complaint against Dr. Gray from patient GH alleging inadequate care and treatment of mold exposure, inadequate follow up care, failure to properly supervise staff resulting in a failure to timely return the patients phone calls and schedule follow up appointments and resolve patients' prescription issues resulting in a delay of treatment. Patient GH is a 49-year-old female who was referred to Dr. Gray by her primary care provider in October of 2021. GH received a initial consult visit on January 6, 2022. From the initial consult visit, Dr. Gray prescribed Itraconazole via nasal spray and ordered an array of both standard and nonstandard laboratory studies. The OMC felt that this degree of laboratory workup was likely unnecessary. The patient completed these labs approximately three weeks after the visit. The labs resulted on January 29, February 18, and March 22. The telemedicine follow-up visit occurred April 8. At the follow-up, Dr. Gray noted the patient's symptoms had returned and worsened. With this, and the patient's lab results, Dr. Gray concluded and diagnosed the patient with "mycotoxicosis" and "cumulative organic chemical hypertoxicity." He then adjusted the treatment regimen and prescribed Amphotericin B, as well as a unique, but generally safe, combination of activated charcoal/bentonite clay, coenzyme Q-10, vitamin C, vitamin D3, fish oil, alpha lipoic acid, plain guaifenesin, and a multivitamin. In the OMC's report, he states the patient reports

inadequate communication from Dr. Gray and his staff. Dr. Gray reported that his staff did make efforts to communicate with GH but were unsuccessful. Dr. Gray's medical record does not reflect any such communications, and there are no phone or email records provided. During the investigation, Board staff determined that Dr. Gray failed to timely respond to multiple communication attempts and failed to furnish information in a timely manner. There were approximately 9 attempts made to reach Dr. Gray, to have GH's records forwarded to the Board and there was no response for months. It was not until the Board subpoenaed the records that Dr. Gray complied.

Mr. Lazarow provided an opening statement to the Board and stated that Dr. Gray worked as an employee of Progressive Healthcare Group, which is a non-profit corporation in a rural underserved community. In January of 2023, which was five or six months after this complaint was filed, Progressive closed. Dr. Gray started transitioning into his own private practice.

Dr. Gray stated that his staff told him that they had tried to reach the patient but that they were having trouble, and she was not returning the calls. Dr. Gray noted that they did have an initial face to face appointment and a follow-up appointment about five weeks later where he did go over the labs, which are in the records. Dr. Gray noted that he typed into the laboratory results themselves exactly the significance of the abnormalities that were found there. Dr. Gray explained that GH's inflammation markers were elevated. Dr. Gray stated that there were communication issues, but his staff did try to reach GH and he knows that we always try to make efforts to be able to be in touch and to make it possible for our patients to communicate.

During questioning, Dr. Bethancourt noted that on May 11th Dr. Gray was notified by email from Board staff of the complaint and that nothing needed to be done. On July 13th Board staff asked for a narrative plus the medical records of the patient. Board staff received the narrative four months later and the medical records weren't provided until 10 months later. Dr. Bethancourt inquired about the delay.

Dr. Gray explained that there was a delay in getting the narrative to the Board since there was an issue with receiving the communications and nothing was sent certified mail. Dr. Gray informed the Committee that he kept message books for reference, and he has not been able to find those since they moved offices. Dr. Gray stated that he has a lot of emails on his account, and he is trying to develop the habit of looking at them every day. With regards to the delay in providing the medical records, Dr. Gray stated that it was a communication issue in terms of actually getting the messages and then responding, but noted that when he got the messages he did respond.

Dr. Bethancourt noted that there were multiple attempts, not only by e-mail, but by phone calls to his office and cell phone.

Regarding the cognitive dysfunction and secondary diabetes insipidus diagnoses, Dr. Gray explained that to order the right labs if he doesn't give the diagnostic code, he can't get the lab work done. Dr. Gray stated that his understanding is if we're considering the diagnosis and a differential, then it's appropriate to put it down as a diagnosis for which you want to get labs. Dr. Gray confirmed that it was not diagnosing that but understands that it appears that way when you read the records.

Dr. Bethancourt commented that the patient's complaint that she tried to make an appointment since she needed prior authorization for the nasal spray but couldn't were substantiated due to staff's multiple attempts to contact the physician.

Dr. Gray stated that the patient should have been able to reach the office and they should have been able to follow through.

In closing Mr. Lazarow stated that this was not a matter of bad faith in not responding to the Board, but that Dr. Gray was trying to pay attention to a busy patient load. Dr. Gray

doesn't use email and was completely overwhelmed. Mr. Lazarow requested that the Committee take the physician's circumstances into account when making a decision.

During deliberations, Dr. Bethancourt appreciated the circumstances of a rural community and the physician's circumstances with the hospital and clinic but opined that there has been unprofessional conduct.

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

SECOND: Dr. Farmer.

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

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

MOTION PASSED.

Dr. Bethancourt opined that this does rise to the level of discipline due to the poor history of not responding to the Board in a timely manner or providing medical records when requested. Dr. Farmer agreed that discipline is warranted given the extensive track record and that there are questions regarding clinical care and questions about the presence or absence of a chaperone. Dr. Farmer opined that failure to communicate is a big factor here and that these behaviors are a pattern here. Dr. Farmer noted that Advisory Letters and Reprimands have not made an impact. Dr. Figge found it mitigating that the complaint was from right before the 2022 order for non-disciplinary CME was ordered. Ms. Dorrell commented that it is difficult to practice and staff a clinic in these rural communities. Dr. Moschonas stated that the Committee understands the difficulties with practicing in a rural community but found it bothersome the number of multiple attempts to get records over the years and the physician does not understand the importance.

MOTION: Dr. Bethancourt moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation with Civil Penalty. Dr. Gray shall pay a Civil Penalty within ninety days via certified funds in the amount of \$9,000. Within six months, complete CPEP's ProBE course in ethics. The licensee shall obtain an unconditional or conditionally passing grade. 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. Gray's request for termination shall be accompanied by proof of successful completion of the CME.

SECOND: Dr. Moschonas.

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

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

MOTION PASSED.

GENERAL BUSINESS

I. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

J. ADJOURNMENT

MOTION: Dr. Bethancourt moved for adjournment.

SECOND: Dr. Moschonas

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

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

MOTION PASSED.

The meeting adjourned at 2:24 p.m.



Patricia E. McSorley

Patricia E. McSorley, Executive Director