



ARIZONA MEDICAL BOARD

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

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FINAL MINUTES FOR SUMMARY ACTION TELECONFERENCE MEETING

Held on Tuesday, June 11, 2024

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

Board Members

Gary R. Figge, M.D., Chair
Bruce A. Bethancourt, M.D., F.A.C.P., Vice-Chair
Lois E. Krahn, M.D., Secretary
Katie S. Artz, M.D., M.S.
Jodi A. Bain, M.A., J.D., LL.M.
David C. Beyer, M.D., F.A.C.R., F.A.S.T.R.O.
Laura Dorrell, M.S.N., R.N.
R. Screven Farmer, M.D.
James M. Gillard, M.D., M.S., F.A.C.E.P., F.A.A.E.M.
Pamela E. Jones
Constantine Moschonas, M.D., F.A.A.N.

GENERAL BUSINESS

A. CALL TO ORDER

Chairman Figge called the Board's meeting to order at: 4:43 p.m.

B. ROLL CALL

The following Board members participated virtually: Dr. Figge, Dr. Bethancourt, Dr. Artz, Ms. Bain, Dr. Beyer, Ms. Dorrell, Dr. Farmer, Dr. Gillard, Ms. Jones and Dr. Moschonas.

The following Board member was absent: Dr. Krahn.

ALSO PRESENT

The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Raquel Rivera, Interim Deputy Director; Claude Deschamps, M.D., Chief Medical Consultant; Nicole Samaradellis, Investigations Manager and Michelle Robles, Board Operations Manager. Carrie Smith, Assistant Attorney General ("AAG") also participated in the teleconference.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

No individuals that addressed the Board during the Public Statements portion of the teleconference.

LEGAL MATTERS

D. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SUMMARY ACTION OR TAKE OTHER ACTION

1. MD-20-0457A, MD-20-0811B, MD-20-0857A, NIKHILKUMAR C. PATEL, M.D., LIC. #55916
Dr. Patel participated virtually with counsel Adam C. Anderson. D.B. addressed the Board during the public statements portion of the meeting.

Board staff summarized these three cases are before the Board for consideration of summary action based on Dr. Patel's refusal to enter into an Interim Consent Agreement for Practice Restriction (ICA) prohibiting him from performing or assisting in the performance of venous procedures while the matter is pending final adjudication as recommended by SIRC. Case MD-20-0457A was filed by another physician

in June 2020. A Medical Consultant (“MC”) determined that the diagnosis of PVD for Patient SG was incorrect based on the lack of ischemic changes, resulting in nonindicated procedures. The MC stated that there was no clinical evidence of PVD, and the patient’s symptoms were not consistent with PVD. Additionally, the diagnostic studies were not suggestive of PAD. The MC stated that poor technique and intravascular ultrasound (IVUS) was not indicated, and that the patient’s condition deteriorated following the procedure. Case MD-20-0811A was filed by a patient in September 2020. The MC determined that Dr. Patel continued to perform vascular procedures on the patient’s left lower extremity with little chance at improving the poor outcome and without consideration for alternative treatments, referrals to similar or alternate providers, and/or giving referral/advice for the patient to see another specialty provider. The MC noted that there were six procedures completed in total, four of which were performed by Dr. Patel. The MC opined that the lack of referral to another vascular specialist for bypass options and the delay in proper treatment resulted in a below knee amputation that could have been avoided. Case MD-20-0857A was filed by a confidential complainant in October 2020. The MC opined that there was no indication for an angiography based on the normal non-invasive tests showing tri-phasic flow and normal toe pressures. The MC determined that the patient’s symptoms were due to lymphedema and not PAD. SIRC reviewed the cases and stated that these cases represent an egregious pattern of poor judgment and substandard care due to misdiagnoses of PVD, performance of inappropriate angiographic interventions, and lack of referral to vascular surgeons to evaluate and appropriately perform surgical vascular bypass. SIRC observed actual harm resulting to patients. SIRC noted that multiple vascular procedures were performed without indication, which caused SIRC to question whether the performance of the procedures were motivated by self-interest and not optimal patient outcomes. Therefore, SIRC recommended a Decree of Censure and Permanent Practice Restriction prohibiting Dr. Patel from performing or assisting in the performance of vascular procedures. Additionally, SIRC recommended that Dr. Patel be offered an Interim Consent Agreement for Practice Restriction prohibiting the performance or assisting in the performance of venous procedures while the matter is pending final adjudication. On May 31, 2023, Dr. Patel was offered the ICA. On June 4, 2024, Dr. Patel’s attorney reported that he declined to sign the ICA.

Mr. Anderson stated that Dr. Patel is not a danger to the public and the only complaints regarding his practice came during a short time with a fast growing group and two of these complaints are from competitors and the third was encouraged by a competitor. Mr. Anderson argued that the cases do not meet the minimum requirements for summary action and requested that the Board not take action.

Dr. Patel stated that he is not a danger to the public and is very thorough with the literature regarding the services that he offers. Dr. Patel explained that when he joined the group and as the practice grew the competition got fierce and that is where these complaints started to come in. Dr. Patel stated that he has since left the group and moved out of state. Dr. Patel confirmed that he has not had a complaint since and has responded to the MC’s reviews or comments with objective findings regarding the literature available.

During deliberations, Dr. Gillard noted that these cases are from 2020 and opined that a summary action is not necessary and suggested inviting the licensee in for a formal interview. Dr. Beyer commented that he is unsure whether there is an issue here. Dr. Beyer stated that he is not convinced that the care was correct; however he is also not convinced that there is an immediate threat. Dr. Moschonas agreed that a more information is needed and agreed that there is not an imminent threat.

Ms. Smith informed the Board that they can offer the originally recommended CA and invited for a FI.

MOTION: Dr. Gillard move to invite Dr. Patel to a formal interview. If the invitation is either declined or not accepted by Dr. Patel, refer the matter for formal hearing.

SECOND: Dr. Artz.

Ms. Jones inquired about the consent agreement and if it would include a PR.

Ms. Smith reiterated that if the Board invites the physician in for a formal interview this process would include the options of signing a consent agreement and formal hearing option.

Dr. Gillard agreed with offering the formal interview invitation. Dr. Beyer opined that this does not rise to the level of discipline and suggested having a second MC review the case since the physician raised a

conflict of interest. Dr. Gillard and Dr. Figge noted that there have been multiple MCs review this matter. Dr. Figge explained that at the time of the formal interview if further investigation is needed is when the Board can make that motion.

VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Artz, Dr. Beyer, Ms. Dorrell, Dr. Farmer, Dr. Gillard, Ms. Jones, Dr. Moschonas. The following Board member voted against the motion: Ms. Bain. The following Board members were absent: Dr. Krahn.

VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

2. MD-24-0526A, MARSHALL F. MEIER, M.D., LIC. #50681

Dr. Meier participated virtually with counsel Michael Raine. Dr. Swain and Kerri Harlan addressed the Board during the Public Statements Portion of the meeting on behalf of the physician.

Board staff summarized that this case was initiated due to a noncompliance report submitted by Dr. Meier's PHP Monitor. Dr. Meier tested positive for cocaine on a saliva test dated May 6, 2024 in violation of his April 12, 2024 SRA which he entered into as a result of Board case MD-24-0041A. Dr. Meier denied using cocaine and initially explained that the positive test could have been from his exposure to friends who used cocaine. Of note, the toxicologist emphasized that the presence of cocaine metabolite in Dr. Meier's May 6, 2024 test proved ingestion so that exposure from friends was not a reasonable explanation. Dr. Meier made multiple arguments about the May 6, 2024 saliva test being invalid. All these arguments were disproven. Most notably, the toxicologist and PHP Monitor both agreed that Dr. Meier's handling of the testing strip did not invalidate the test and it is a confirmed positive. Dr. Meier's negative hair and urine tests through the PHP Monitor do not mean that the May 6, 2024 test was a false positive. Dr. Meier's at home testing is not the same as the testing performed for this Board, the results are impossible to verify and they do not invalidate the positive May 6, 2024 saliva test. The PHP Monitor determined that Dr. Meier requires additional treatment due to his confirmed positive test. The PHP Monitor did not find that Dr. Meier is unsafe to practice but he does require IOP and or additional treatment now. Dr. Meier's SRA states that in the event of his use of drugs in violation of the SRA, he shall promptly enter into an Interim Restriction. The Board's Investigative Staff, Chief Medical Consultant and Lead Board Member all agreed that an Interim Restriction was appropriate in this case. Board staff offered Dr. Meier an Interim Restriction pending his completion of additional treatment but he has declined to enter into it. Therefore, this case is before you today to consider the summary suspension of his license.

Mr. Raine noted that after the positive saliva test the PHP discussed the issue with Dr. Meier and sent him for a hair and nail test which was negative. Dr. Lott recommended a IOP for a return to practice. Dr. Lott is comfortable that Dr. Meier is safe to practice if he enters into the IOP, not after completion of the IOP which is what the ICA for Practice Restriction stated. Mr. Raine stated that it is undeniable that Dr. Meier is fit to practice as long as he complies with the recommendations from Dr. Lott and the PHP. Dr. Lott stated that this was not a relapse but sees behavioral problems that can be addressed in the existing plan with Dr. Jenkman. Mr. Raine noted that Dr. Meier's practice is aware of the situation and is also monitoring him. Dr. Meier is willing to comply with Dr. Lott's recommendations. Mr. Raine argued that summary action requires an emergency and there is none here. Mr. Raine requested that the Board take no action today as there is no emergency and summary action would cause harm. Mr. Raine further argued that this is technically not a violation, but understood if further investigation is needed as a disciplinary matter.

Dr. Meier stated that there have never been concerns that he is unsafe to practice and admits that he has made mistakes and is willing to continue treatment. Dr. Meier explained that he turned down the ICA since he does not think he is unsafe to practice.

Ms. Bain referenced the Dr. Lubin email and inquired about what question did Dr. Lubin answer.

Ms. Downey explained that Dr. Lubin answered that he did not believe the positive result was due to environmental exposure.

Ms. Bain requested clarification on the definition of "ingest".

Ms. Downey explained that the environmental exposure is not considered from ingesting it but from the environment, so her interpretation was that Dr. Meier ingested it. Dr. Lott described the situation about

how the hair testing could have been negative due to the timeframe for how long it takes to grow out into the hair versus the urine and so he was certain it was a positive test. The toxicologist was more specific and stated that he did not believe it was environmental although, Dr. Lott was willing to entertain that possibility.

Dr. Farmer commented that the Board has solid expert opinion that the test results are not an issue. Dr. Farmer further noted that it is not disputed in the record that while he was under a stipulation, he was associating with people who were abusing illegal drugs. Dr. Farmer further commented that at two different times the story was changed.

Ms. Downey confirmed that is what he initially explained it was due to being around his friends and later he said he didn't know if any of his friends were using it.

Ms. Jones physician was offered an ICA that he would not be allowed to practice until he completed the IOP.

Ms. Downey explained that Dr. Lott provided two options; to complete the IOP or complete four to six weeks of three times per week treatment with his treating provider.

Ms. Jones questioned if Dr. Lott specifically stated that Dr. Meier should not practice while completing the IOP and additional therapy sessions.

Dr. Figge noted that the physician and his attorney noted that Dr. Lott stated he was safe to practice and not after he completed the IOP

Ms. Bain inquired about a possible change to the SRA.

Ms. Smith informed the Board that a change to the SRA or revocation is not an option today. If this case was returned for further investigation Board staff can consider an amended or revised ICA. Ms. Smith explained that the question before the Board today is whether or not summary action is appropriate.

Dr. Beyer expressed confusion given the "shall" language of the SRA. Dr. Beyer opined that the real question is not how busy his practice is but whether or not this drug test suggests a relapse or use of drug since the order does not say "may" but "shall". If the Board believes the test is positive there isn't a choice. The Board needs to determine if the hair test creates doubt. Dr. Lott gives a lot of good information regarding therapeutic steps going forward but he does not really answer the question of if he relapsed.

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. Farmer.

VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Ms. Bain, Dr. Beyer, Ms. Dorrell, Dr. Farmer, Dr. Gillard, Ms. Jones and Dr. Moschonas. The following Board member was absent: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 5:48 p.m.

The Board returned to Open Session at 6:05 p.m.

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

During deliberation, Dr. Gillard opined that this does not rise to the level of discipline and recommended returning the case for SIRC's consideration.

Ms. Smith noted that there are additional steps that need to take place in the investigation before going to SIRC.

MOTION: Dr. Gillard moved to return the matter for further investigation.

SECOND: Dr. Bethancourt.

Dr. Bethancourt spoke in favor given and noted that the palliative test was negative for a positive for metabolite hair samples were negative, and the other professionals within the practice stated that they've tested him frequently. Dr. Farmer spoke against the motion since it has been agreed by everyone that he was on a stipulation and was associated with people doing cocaine. Dr. Farmer opined that this in itself is

a lapse in judgement and expressed concern for the public as this is someone who has changed his narrative. Dr. Farmer opined that there is no inconsistency with the hair test given the timing and that the test results are valid. Dr. Farmer further opined that there is a threat to public safety and was inclined to reoffer the ICA for Practice Restriction. Ms. Jones spoke against the motion and expressed concerns since this was one month into his SRA and he spent time with friends who use cocaine and alcohol and he changed his story. Ms. Jones commented that even if he not knowingly used cocaine he put himself in a dangerous situation. Ms. Jones opined that he was not taking his SRA seriously. Ms. Jones noted Dr. Lubin, who is an expert on addiction medicine, stated the presence of the metabolite proves ingestion, so that exposure from friends is not a reasonable explanation. Dr. Gillard opined that this does not rise to summary action and this can be sent back. Dr. Gillard stated that the comments made by Dr. Farmer and Ms. Jones can be addressed when determining whether or not discipline is warranted. Dr. Artz spoke against the motion and expressed confusion on how a physician with such a big consequence at stake could put himself in this situation. Dr. Artz noted that a positive saliva example is anything over 8 nanograms and his was 70. Dr. Artz opined that the physician's judgment was off and he needs to continue treatment and agreed with the staff's recommendation. Dr. Farmer stated that he does not take summary action lightly, but there was a lapse in judgement and there was a violation. Dr. Farmer opined that there was also a lack of insight and reliability and opined summary action is justified. Dr. Beyer spoke in favor of the motion and stated that he was influenced by Dr. Lott's letter. Dr. Beyer stated that although there was a positive test he was not convinced patients are at risk and that this can go through the normal process. Dr. Figge agreed with the motion and opined that there isn't an imminent risk to the public and that this may be eye-opening to the physician.

VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Gillard and Dr. Moschonas. The following Board members voted against the motion: Dr. Artz, Dr. Farmer and Ms. Jones. The following Board member abstained: Ms. Bain. The following Board members were absent: Dr. Krahn.

VOTE: 6-yay, 3-nay, 1-abstain, 0-recuse, 1-absent.

MOTION PASSED.

E. ADJOURNMENT

MOTION: Ms. Jones moved for adjournment.

SECOND: Dr. Farmer.

VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Artz, Ms. Bain, Dr. Beyer, Ms. Dorrell, Dr. Farmer, Dr. Gillard, Ms. Jones and Dr. Moschonas. The following Board member was absent: Dr. Krahn.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The meeting adjourned at 6:20 p.m.



A handwritten signature in black ink that reads "Patricia E. McSorley".

Patricia E. McSorley, Executive Director