



Arizona Medical Board

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FINAL MINUTES FOR REGULAR SESSION MEETING Held on Wednesday, June 5, 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., F.A.C.P.

GENERAL BUSINESS

A. CALL TO ORDER

Chair Figge called the meeting to order at: 8:02 a.m.

B. ROLL CALL

The following Board members were present: Dr. Figge, Dr. Bethancourt, Dr. Krahn, Dr. Artz, Ms. Bain, Ms. Dorrell, Dr. Gillard, Ms. Jones and Dr. Moschonas.

The following Board members participated virtually: Dr. Beyer and Dr. Farmer.

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, Interim Investigations Manager; Amy Skaggs, SIRC Coordinator and Michelle Robles, Board Operations Manager. Carrie Smith, Assistant Attorney General ("AAG") also participated in the meeting.

C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA

Individuals who addressed the Board during the Public Statements portion of the meeting appear beneath the case.

D. EXECUTIVE DIRECTOR'S REPORT

- Review, Consideration and Possible Action Re: Draft Response to Governor's Request for Standardized Processes or Rubrics for Discipline and the Reporting of Suspected Abuse, Neglect or Exploitation to Law Enforcement.

Ms. McSorley informed the Board that a response letter was sent to the Governor's office that contained detailed information on the Board's procedures when reporting cases to law enforcement. The Governor's office requested that all health regulatory boards come up with a rubric or policies regarding reporting to law enforcement and when law enforcement

needs to be informed of an incident and to create policies or guidelines on disciplinary actions. Regarding disciplinary guidelines, they allow the Board to take into consideration progressive discipline and allow the Board to continue to use its best judgement and knowledge to arrive at the right decision based on the facts of the case. With regards to reporting to law enforcement, Ms. McSorley noted that the Board requires evidence before reporting any criminal issues to law enforcement. With the help of the Board's legal counsel the Board can review evidence and decipher if there is a need or obligation to report to law enforcement. Board staff reiterated that these standards are being met by the Board and is requesting Board approval to submit these to the Governor's office.

Ms. Bain questioned if the term "clear-cut evidence" used in the sample final draft was the same as objective and verifiable evidence.

Board Staff clarified that "clear-cut" is a term of art and an example of clear-cut evidence would be a case where a physician wrote a prescription under the name of another physician.

Ms. Bain abstained from approving the submission to the Governor's office.

Dr. Farmer inquired about what criteria third parties use, such as the FSMB, when rating a Board's performance.

Ms. McSorley informed the Board that the FSMB has model policies that the Board has reviewed and uses as a guideline to how matters should be handled and conducted, but she would not adopt them verbatim. Ms. McSorley noted that state boards conduct themselves based on what their statutes allow.

Ms. Bain inquired if a practice limitation can be done outside of probation.

Ms. Smith clarified that this cannot be done and the Board uses a non-disciplinary limitation if a physician has a health condition, but it is still reported.

Ms. Bain inquired if the phrase "community standard of medicine" was the same as stating the "standard of care".

Ms. Smith confirmed that the terms had the same meaning.

Ms. Jones inquired if a physician failed to report a criminal charge what reporting mechanisms are in place.

Ms. Smith explained that although there is not an enforceable mechanism in place to automatically inform the Board, the Arizona Superior Court has a statute that requires criminal convictions to be reported to the defendant's licensing board. Additionally, the Board relies on not only law enforcement to report the conviction we also receive reports from family members, colleagues and concerned citizens.

- Discussion Regarding Conflict of Interest Forms and Online Board Member Training

Ms. McSorley thanked Board members for providing their signed conflict of interest forms that were handed out. Ms. McSorley then reminded the Board of the mandatory online training the governor's office and the ADOA have requested Board members to complete by July 1, 2024.

E. CHAIR'S REPORT

Dr. Figge informed the Board of the process for assigned formal interviews to Committees. Dr. Figge noted that if the Board would like to discuss this further and more in depth that it could be agendaized for the next meeting.

F. LEGAL ADVISOR'S REPORT

- Board Member Training – Member Communications and Conflicts of Interest
Ms. Smith provided training to the Board regarding conflicts of interest and when members should recuse.

G. DISCUSSION REGARDING DEBRIEFING ON BOARD PROCESSES

Board staff informed the Board of the GLSuites update and explained that if Board members have any issues to contact staff.

H. APPROVAL OF MINUTES

- March 6, 2024 Special Teleconference Minutes; including Executive Session
- April 5, 2024 Regular Session Minutes; including Executive Session

MOTION: Dr. Gillard moved to approve the March 6, 2024 Special Teleconference Meeting; including Executive Session and the April 5, 2024 Regular Session Meeting; including Executive Session.

SECOND: Dr. Krahn.

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

VOTE: 11-yay, 0-nay, 0(Dr. Artz abstained from the April 5th minutes)-abstain, 0-recuse, 0-absent.

MOTION PASSED.

LEGAL MATTERS

I. MOTION FOR REHEARING/REVIEW (Formal Hearing)

1. MD-21-1151A, WINSTON R. HEWITT, M.D., LIC. #44341

Dr. Hewitt was present without counsel. AAG Elizabeth Campbell was present on behalf of the State. AAG Ben Norris was present as the Board's Independent Legal Advisor.

Dr. Hewitt stated that he did not dispute the ultimate facts of the case, but did dispute the context in which the ultimate decision was made due to being flavored by the investigation which he believed was inaccurate and should be easy to review and prove to be false. Dr. Hewitt opined that the penalty was harsh and excessive.

Ms. Campbell summarized that Dr. Hewitt's motion does not have a basis for a review or rehearing for excessive penalty. The Board imposed a Letter of Reprimand, which is the Board's lowest form of discipline. Ms. Campbell informed the Board that a letter of support from the chair of the Mayo Clinic Transplant Center has been submitted by Dr. Hewitt to support his argument and request for a review or rehearing. The State's position is based on the facts following the administrative hearing which show that a Letter of Reprimand is a suitable outcome for this case.

Dr. Gillard inquired if before this case can be heard by the Superior Court is the denial of a rehearing is necessary.

Ms. Campbell confirmed that Dr. Hewitt must request the appeal and have it denied to exhaust his administrative hearings and then he is able to appeal to the superior court.

Dr. Gillard further questioned if new information was presented could it be heard by the superior court or if they would just review the investigation findings.

Ms. Campbell informed the Board of the different types of hearings that could be requested by Dr. Hewitt and reminded the Board that if there is newly found evidence the Board could grant a motion for review of the new evidence or a rehearing for after the new information has been reviewed.

Ms. Bain inquired about the basis for the Board to grant rehearing or review.

Ms. Campbell informed the Board that she provided the eight bases for the Board to grant rehearing or reviewing in the State's response to the Motion for Rehearing or Review.

Ms. Bain inquired if the Letter of Reprimand is for a certain amount of time or is it on record.

Ms. Campbell confirmed that a Letter of Reprimand is a permanent record and will remain on the Board's website for five years.

Ms. Baine inquired if for some reason incorrect information was found in the investigation, would that be one of the items that falls into one of the eight categories for consideration of review or rehearing or a denial.

Ms. Campbell explained that he would need to establish that this is material evidence, which Ms. Campbell opined that it is not, and second he would need to establish with reasonable diligence that he couldn't have produced the evidence at the hearing because even though he was given notice of the hearing he did not attend.

Dr. Beyer opined that certain threshold that need to be met to grant the rehearing which in this case have simply not been met. Dr. Beyer agreed that the evidence alluded to by the physician may or may not have been material but was known about by the licensee and could have been presented at the hearing. Dr. Beyer opined that there is nothing excessive about the penalty given the facts of the case.

MOTION: Dr. Beyer moved to deny the motion for rehearing or review.

SECOND: Ms. Jones.

Ms. Bain stated that had this licensee been more diligent throughout this process there could have been a different outcome. Ms. Bain questioned if the licensee still has the right to appeal.

Ms. Campbell explained that under A.R.S. § 12-901 sets out the procedure and basis for judicial review. If the Board decides on a disciplinary decision, then Dr. Hewitt would then be able to appeal to the Superior Court.

Ms. Bain stated that she would have preferred more participation from the licensee from the beginning because the Board, Board staff and OAH have gone through considerable effort to ensure both parties the right to participate. Ms. Bain noted that the letter being presented today speaks more to Dr. Hewitt's medical ability, which is not being investigated.

Ms. Campbell reminded the Board that the Letter of Reprimand being issued is not regarding Dr. Hewitt's lack of participation in this case but is regarding his failure to meet the standard of care when he failed to attend two transplant surgeries as the attending physician.

Dr. Figge clarified that Dr. Hewitt requested an administrative hearing instead of a Board interview, he was properly notified of said hearing and still failed to attend. Dr. Figge agreed that the Letter of Reprimand was awarded due to his actions not that he failed to attend the hearing and the Board agreed with that recommendation.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

2. MD-23-0845A, JEAN H. VINCENT, M.D., LIC. #66713

Dr. Vincent participated virtually without counsel. AAG Elizabeth Campbell was present on behalf of the State. AAG Ben Norris was present as the Board's Independent Legal Advisor.

Dr. Vincent stated that during the initial investigation and hearing he was a victim of harassment and homelessness. Dr. Vincent opined that because of those circumstances his defense was never heard and believed that he should be awarded the opportunity to defend and represent himself.

Ms. Campbell stated that Dr. Vincent was notified of the hearing and did not contact OAH to request continuance or arrange alternative means to attend the hearing. The primary issue in this case is the noncompliance of the licensee to complete the comprehensive evaluation that was ordered by the Board. Ms. Campbell opined that the actions thus far from the licensee during the investigation further highlight the need and appropriateness of the Boards interim order.

Dr. Krahn noted that the Board has received and reviewed documents and opined that she did not see any grounds for a rehearing or for a review.

MOTION: Dr. Krahn moved to deny the motion for rehearing or review.

SECOND: Dr. Bethancourt.

Dr. Gillard informed the public that a denial from the Board needs to happen before the licensee can appeal to a higher court and in doing so the licensee would be able to have all his concerns heard. Dr. Figge pointed out that for rehearing Dr. Vincent would have to meet one of the eight criteria as discussed in the previous case.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

J. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION.

Possible action includes, but is not limited to, adopting Findings of Fact, Conclusions of Law and Order.

Pursuant to A.R.S. § 41-1092.08(i), the Board may meet and confer for purposes of modifying the recommended decision, including the Findings of Fact, Conclusions Of Law and Recommended Order set forth in the ALJ's recommended decision issued in case no. 24A-62055-MDX involving Dr. Khursheed Haider.

1. MD-24-0047A, KHURSHEED HAIDER, M.D., LIC. #62055

Dr. Haider was not present. AAG Elizabeth Campbell was present on behalf of the State. AAG Ben Norris was present as the Board's Independent Legal Advisor.

Ms. Campbell summarized that this case is based on felony charges in California which resulted in the Summary Suspension of Dr. Haider's medical license in Texas, which he failed to report to the Board in a timely manner. Ms. Campbell, on behalf of the State, requested that the Board uphold the ALJ's recommendation which includes revoking the medical license and assessing the cost of the formal hearing in the amount of \$387.53.

MOTION: Ms. Jones moved to adopt the Findings of Fact as recommended by the ALJ.

SECOND: Dr. Krahn.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

MOTION: Dr. Krahn moved to adopt the Conclusions of Law as recommended by the ALJ.

SECOND: Ms. Bain.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

MOTION: Ms. Jones moved to adopt the ALJ recommendation to affirm the Board's summary suspension and Order for Revocation, which incorporates the amendment to the Order to include \$387.53 (\$218.28 + \$169.25) for costs incurred by the Board and initiate the meet and confer process.

SECOND: Dr. Bethancourt.

Ms. Campbell argued that since the licensee was not present, that he waived the meet and confer. Ms. Campbell requested clarification regarding the Board's intention to include the \$387.53 in cost.

Dr. Figge explained that based on the materials provided the cost is included in the motion.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

K. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON SETTLEMENT OFFER IN LIEU OF FORMAL HEARING

1. MD-16-1248A, MD-17-0092A, MD-17-0388A, MD-17-0719A, STEVE FANTO, M.D., LIC. #21415

Dr. Fanto was present with counsel Sara Stark. AAG Roberto Pulver was present on behalf of the State. AAG Ben Norris was present as the Board's Independent Legal Advisor.

Mr. Pulver stated that any decision made by the Board will have the support of the Attorney General. Mr. Pulver further stated that Dr. Fanto's medical license is in a suspended E license under A.R.S. § 32.3202 which means that the license is expired and suspended which means that the following options are available to the Board: A Letter of Reprimand, Decree of Censure, Civil Penalty or a Surrender of license. The Board is unable to grant probation, nor can it grant a stay of revocation.

Ms. Stark stated that a written settlement proposal has been submitted. Ms. Stark argued that Dr. Fanto would have been better off had his license been revoked, because then he would have been able to reapply for licensure two years ago. Ms. Stark requested that the Board look at Dr. Fanto's case as if he was reapplying after a long period of revocation. Ms. Stark stated that Dr. Fanto was never offered a term of probation and have set forth terms of probation as a starting point. It is understood that the Board is unable to grant a probation period however, Ms. Stark requested that the Board consider a dual process which would allow him to reapply. Assuming the licensee meets the requirements for reapplication which include a clinical competency evaluation, and the evaluators recommend that he is safe to practice. Dr. Fanto would be subject to any probation terms the Board determines are necessary.

Dr. Fanto stated that while he was practicing his prescribing practices were in line with the care his he understands that recent guidelines refute previous practices and acknowledged that in 2015 he continued to use practices that no longer met the new guidelines. Dr. Fanto admitted to solely addressing patients' pain complaints without modifying his practices to meet the new guidelines. Dr. Fanto apologized for his previous legal counsel and for following the bad advice he was given and the actions the legal advisor took against the Board. Dr. Fanto acknowledged and understood the Board's concerns and if given the chance, is willing and able to comply with any restrictions the Board deems appropriate.

Dr. Fanto opined that most of the issues found were related to charting and prescribing controlled medications. Dr. Fanto informed the Board of the changes he would make if he is able to practice. Dr. Fanto stated that he wishes to return to being a practicing physician in his area of expertise without being able to prescribe Scheduled II medications.

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: Ms. Jones.

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

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Board entered Executive Session at 9:50 a.m.

The Board returned to Open Session at 10:16 p.m.

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

MOTION: Dr. Farmer moved to reject the settlement offer and continue the case to formal hearing.

SECOND: Dr. Krahn.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

CONSENT AGENDA

L. CASES RECOMMENDED FOR DISMISSAL

1. MD-24-0147A, CHARLIE T. CHENG, M.D., LIC. #68346

MOTION: Dr. Gillard moved to dismiss.

SECOND: Dr. Krahn.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

M. CASES RECOMMENDED FOR ADVISORY LETTERS

MOTION: Dr. Krahn moved to issue an Advisory Letter in item numbers 3-6.

SECOND: Dr. Bethancourt.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. THIS CASE HAS BEEN PULLED FROM THE AGENDA.
2. MD-23-0194A, CLIFFORD T. BAKER, M.D., LIC. #42990
Counsel Fred Cummings addressed the Board during the public statements portion of the meeting on behalf of the physician.

Dr. Bethancourt questioned whether Dr. Baker would be at fault if a mechanical issue occurred. Dr. Artz stated that she uses these kinds of grounding pads and instruments several times a day and that when the safety mechanisms are not working, then the machines should also not work. Dr. Artz opined that Dr. Baker went above and beyond the

standard of care in settling. Dr. Artz sympathized for the patient; however, it was a mistake that Dr. Baker could not have prevented and it was not his fault. Dr. Farmer agreed that although this was a very bad outcome, the responsibility for the outcome was a mechanical error and should not be placed on the physician.

MOTION: Dr. Betancourt moved to dismiss.

SECOND: Dr. Artz.

Dr. Gillard noted that even though the Medical Consultant (“MC”) found fault in the placement of the pad it wouldn’t make any difference if there was an issue with the pad itself. Dr. Gillard agreed with the motion.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

3. MD-22-1056A, MARK T. YOSHINO, M.D., LIC. #14912

RESOLUTION: Advisory Letter for failing to identify and report a schwannoma on an MRI. 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.

4. MD-23-0714A, KEVIN J. HOOKER, M.D., LIC. # 37930

RESOLUTION: Advisory Letter for inadequate documentation. 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.

5. MD-23-1241A, PRABHAKAR PANDEY, M.D., LIC. #25647

RESOLUTION: Advisory Letter for failing to maintain accurate records. The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

6. MD-23-0760A, ANDREW S. CRUZ, M.D., LIC. #67258

RESOLUTION: Advisory Letter for violating a Board order. 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.

N. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDERS

1. MD-22-0643A, ROBERT C. ALLEN, M.D., LIC. #30153

MOTION: Dr. Gillard moved to issue an Advisory Letter and Order for Non-Disciplinary CME for failing to comply with mandatory CSPMP use requirements and for inappropriate prescribing of controlled substances. 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. Within six months, complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person (virtual) course regarding prescribing controlled substances. 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. Moschonas.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

2. THIS CASE HAS BEEN PULLED FROM THE AGENDA.

O. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

MOTION: Dr. Beyer moved to uphold the Executive Director dismissal in item numbers 1-4.

SECOND: Bethancourt.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. MD-23-0395A, ROBERT M. CERCEK, M.D., LIC. #41492

Counsel Cody Hall addressed the Board during the public statements portion of the meeting on behalf of the physician.

RESOLUTION: Dismissal upheld.

2. MD-23-0963A, RONALD J. CANIGLIA, M.D., LIC. #21593

RESOLUTION: Dismissal upheld.

3. MD-23-0373A, RADBEH TORABI, M.D., LIC. #58233

MW addressed the Board during the public statements portion of the meeting.

RESOLUTION: Dismissal upheld.

4. MD-23-0510A, BYRON H. WILLIS, M.D., LIC. #30100

SR and KE addressed the Board during the public statements portion of the meeting. Counsel Cody Hall addressed the Board during the public statements portion of the meeting on behalf of the Physician.

RESOLUTION: Dismissal upheld.

P. PROPOSED CONSENT AGREEMENTS (Disciplinary)

MOTION: Dr. Krahn moved to accept the consent agreements in item numbers 2 and 3.

SECOND: Dr. Farmer.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. MD-20-0821A, JENNIFER IACOVELLI, M.D., LIC. #36705

Ms. Jones inquired about why the consent agreement is only for the ethics but did not include any restrictions or probation on prescribing controlled substances.

Board staff informed the Board that she was not part of the SIRC discussion and was unable to provide that information to the Board.

Ms. Jones agreed with the ethics courses but believed that prescribing courses and a restriction or probation for prescribing controlled substances should be put into effect. Dr. Artz agreed that some kind of practice or license restriction needs to occur.

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: Ms. Jones.

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

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Board entered into Executive Session at 8:39 a.m.

The Board returned to Open Session at 8:50 a.m.

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

Ms. Jones inquired about the length of the ProBE ethics course and whether this is an in-person or an online course.

Ms. Rivera informed the Board that this is a three day extensive online course that concludes with a pass/fail essay which is a huge deciding factor in the grading of the course.

Ms. Jones opined that because of the nine years Dr. Iacovelli has been prescribing medications under the wrong DEA number assigned to her that a practice or license suspension needs to be put in place and that the physician should have to undergo a course in prescribing controlled substances.

Ms. Smith informed the Board that this case would have to go back to SIRC and a new consent agreement could be proposed after further investigation.

MOTION: Ms. Jones moved to reject the signed consent agreement and return the case to SIRC for consideration of a practice restriction for controlled substance prescribing and CME in controlled substance prescribing.

SECOND: Dr. Farmer.

Dr. Beyer spoke against the motion stating that nothing has been shown to indicate that the physician does not know how to prescribe controlled substances, nor is the care being called into question. Dr. Beyer opined that there is an ethics issue and the current proposed consent agreement captures the essence of what really needed to be fixed. Dr. Krahn agreed that the physician did not prescribe the wrong medications or dosages she just did not follow the rules and was unethical in the way she prescribed the prescriptions. Dr. Krahn opined that the current proposed consent agreement covers the most concerning issues and questioned if a decree of censure would be more appropriate. Dr. Gillard agreed that the proposed consent agreement covers the concerning issues. Dr. Farmer agreed that this is an ethical issue with a long concerning history but it is not a knowledge issue. Dr. Krahn noted that this is not a malpractice case but is a criminal case and did not see any evidence of inappropriate dosages or reasons for the medications not to be issued. Dr. Krahn further noted that the proposed consent agreement will be accompanied by criminal conviction. Dr. Gillard commented that the problem is with the physician prescribing medications to family members. Dr. Gillard further stated that he would have been okay with sending it back to SIRC but that he did not see that adding this much to the motion would help anything. Dr. Farmer agreed that this is an ethical issue and expressed that this needs to be an example that this behavioral is not appropriate for any licensee.

VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Artz and Ms. Jones

The following Board members voted against the motion: Dr. Figge, Dr. Bethancourt, Dr. Krahn, Dr. Beyer, Ms. Dorrell, Dr. Gillard and Dr. Moschonas. The following Board member abstained: Ms. Bain.

VOTE: 3-yay, 7-nay, 1-abstain, 0-recuse, 0-absent.

MOTION FAILED.

MOTION: Dr. Gillard moved to accept the consent agreement for a Letter of Reprimand and Probation. Within six months, complete CPEP's ProBE course in ethics. The CME hours shall be in addition to the hours required for license renewal. The licensee shall obtain an unconditional or conditionally passing grade. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Iacovelli's request for termination shall be accompanied by proof of successful completion of the CME.

SECOND: Dr. Krahn.

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

VOTE: 7-yay, 4-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

2. MD-23-0243A, MD-23-0011A, HETALKUMAR C. C. SHAH, M.D., LIC. #25006
Counsel Fred Cummings addressed the Board during the public statements portion of the meeting on behalf of Dr. Shah.

RESOLUTION: Consent agreement for a Letter of Reprimand and Probation. Within six months, the physician shall obtain no less than 6 hours of Board staff pre-approved Category I CME in the management of high-risk pregnancies; and complete CPEP's medical recordkeeping course. Within thirty days of completing the Board ordered CME, the physician shall enroll into CPEP's personalized implementation program (PIP). 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. Shah's request for termination shall be accompanied by proof of successful completion of the CME.

3. MD-22-0052A, COLE J. MCEWEN, M.D., LIC. #55831

RESOLUTION: Consent agreement for a Letter of Reprimand and Five-Year Probation, retroactive to May 3, 2022, with terms and conditions consistent with his Interim Order. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. McEwen's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.

Q. LICENSE APPLICATIONS

i. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TAKE OTHER ACTION

MOTION: Dr. Krahn moved to grant the license in item numbers 1-4 and 6-10.

SECOND: Dr. Bethancourt.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. MD-24-0236A, JUAN C. CUCALON, M.D., LIC. #N/A

RESOLUTION: License granted.

2. MD-24-0092A, EUGENE L. VER, M.D., LIC. #N/A

RESOLUTION: License granted.

3. MD-24-0203A, RICHARD C. MONTGOMERY, M.D., LIC. #N/A

RESOLUTION: License granted.

4. MD-24-0332A, TODD BARRETT JAFFE, M.D., LIC. #N/A

RESOLUTION: License granted.

5. MD-24-0197A, DAYAMAL C. WAAS, M.D., LIC. #N/A

Ms. Bain inquired about a possible typo in the completed CME dates.

Board staff confirmed that the error was a typo, and that the CME was completed in 2016 and 2019.

MOTION: Dr. Gillard moved to grant the license.

SECOND: Ms. Dorrell.

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

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

MOTION PASSED.

6. MD-23-0495A, JORDAN G. GRAYBILL, M.D., LIC. #N/A

RESOLUTION: License granted.

7. MD-24-0074A, ROBERT J. HOLLOWAY, M.D., LIC. #N/A

RESOLUTION: License granted.

8. MD-23-1159A, THOMAS P. J. HOLCOMBE, M.D., LIC. #N/A

RESOLUTION: License granted.

9. MD-24-0385A, KATHRYN V. DOBBS, M.D., LIC. #N/A

RESOLUTION: License granted.

10. MD-24-0163A, KAREN E. JENKINS, M.D., LIC. #N/A

RESOLUTION: License granted.

ii. **CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TAKE OTHER ACTION WITH STAFF RECOMMENDATION**

MOTION: Dr. Gillard moved to offer the physician the opportunity to withdraw his license application in lieu of a formal license denial within 30 days for the reasons as stated by SIRC in item numbers 1-3.

SECOND: Dr. Moschonas

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

Dr. Gillard commented that this allows for reapplication after certain shortcomings have been addressed.

1. MD-22-1088A, RICK J. GOMEZ, M.D., LIC. #N/A

RESOLUTION: Offer the physician the opportunity to withdraw his license application in lieu of a formal license denial. If not withdrawn within 30 days, deny the license based on A.R.S. § 32-1422(A)(3)(4) and (C).

2. MD-23-0759A, MICHAEL MAK, M.D., LIC. #N/A

Dr. Mak addressed the Board during the public statements portion of the meeting.

RESOLUTION: Offer the physician the opportunity to withdraw his license application in lieu of a formal license denial. If not withdrawn within 30 days, deny the license based on A.R.S. § 32-1422(A)(4)(6) and (7), (C) and (D).

3. MD-24-0115A, KELLY D. KARTCHNER, M.D., LIC. #N/A

Dr. Kartchner addressed the Board during the public statements portion of the meeting.

RESILUTION: Offer the physician the opportunity to withdraw his license application in lieu of a formal license denial. If not withdrawn within 30 days, deny the license based on A.R.S. § 32-1422(A)(3)(4) and (C).

iii. **REVIEW, CONSIDERATION AND POSSIBLE ACTION REGARDING LICENSE REACTIVATION, OR TAKE OTHER ACTION**

MOTION: Dr. Gillard moved to grant the license reactivation in item numbers 1, 2 and 4.

SECOND: Dr. Bethancourt.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. MD-23-1057A, KIRK T. MOSS, M.D., LIC. #31364

RESOLUTION: License reactivation granted.

2. MD-23-1207A, NORMAN C. Y. WANG, M.D., LIC. #33184

RESOLUTION: License reactivation granted.

3. MD-22-1091A, MONTE J. SCHWARTZ, M.D., LIC. #33951

Dr. Artz and Dr. Farmer stated that they know the physician but that it would not affect their ability to adjudicate this case.

Ms. Jones inquired if this needs to be taken separately due to the reactivation upon a consent agreement and payment of any fees. Dr. Gillard pointed out that the physician did have a time when he was out of practice and had a CPEP evaluation in February which showed that he was safe to practice with the recommendation that he work with a preceptor. Dr. Gillard further noted that the proposed consent agreement is for reentry with a probational license for one year. Ms. Bain noted that the proposed consent agreement states that the Board may reactivate an inactivated license if the applicant pays the renewal fee and if evidence is presented that is satisfactory to the Board that the applicant possesses the medical knowledge and is physically and mentally able to safely practice medicine. Ms. Jones noted that the proposed consent agreement shows that the provider will be on probation for a minimum of one year with certain terms as outlined in the consent agreement.

MOTION: Ms. Jones moved to offer the applicant a consent agreement for license reactivation and minimum one year probation, requiring the physician to

enroll in CPEP's Reentry Program with terms consistent with CPEP's back to practice recommendations. In addition, Dr. Schwartz shall be required to utilize a preceptor to ensure maintenance of direct patient care and communication skills. The physician may petition the Board to request that the probation be terminated, and full licensure be granted after one year. The request must be accompanied by a letter of support from his preceptor.

SECOND: Dr. Gillard.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

4. MD-24-0392A, KEITH A. FREY, M.D., LIC. #27331

Dr. Krahn and Dr. Bethancourt stated that they know the physician but that it would not affect their ability to adjudicate this case.

RESOLUTION: License reactivation granted.

iv. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING APPLICANT'S REQUEST FOR WAIVER OF DOCUMENTATION REQUIREMENT

MOTION: Dr. Gillard moved to grant the request for waiver of documentation requirement and grant the license in item numbers 1-4.

SECOND: Dr. Krahn.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

1. CHRISTINE L. CAMBRIDGE, M.D., LIC. #N/A

RESOLUTION: Waiver request and license granted.

2. KRISTEN M. EISENMAN, M.D., LIC. #N/A

RESOLUTION: Waiver request and license granted.

3. GINGER K. BRYANT, M.D., LIC. #N/A

RESOLUTION: Waiver request and license granted.

4. JOEL L. SPITZ, M.D., LIC. #N/A

RESOLUTION: Waiver request and license granted.

*****END OF CONSENT AGENDA*****

OTHER BUSINESS

R. REQUEST FOR MODIFICATION OF BOARD ORDER

1. MD-22-0952A, UPENDRA C. PATEL, M.D., LIC. #21143

Ms. Jones requested clarification on if the physician is requesting that this be modified to being prohibited from prescribing controlled substances.

Ms. Smith confirmed that is exactly what the physician is asking for. Ms. Smith explained that is an indefinite probation however, it also allows the physician to request for

termination of the probation. The termination would only be granted if the physician undergoes any sort of competency evaluations and/or any additional terms of probation that the Board deems fit at that time.

Ms. Jones inquired if the physician currently has an active DEA registration.

Board staff informed the Board that the DEA has confirmed that he has relinquished his DEA license.

Ms. Jones questioned if the Board would be notified if the physician tries to prescribe prescriptions since he no longer holds a valid DEA license number.

Ms. Smith explained that Dr. Patel would need to re-apply for his DEA certification

Board staff further explained that in the event that he was successful in prescribing controlled substances without a valid DEA license there is a mechanism for Board staff to run a report on any controlled substance prescriptions that were issued during any given period.

Dr. Gillard noted that on February 3, a consent agreement for a Letter of Reprimand, CME and Practice Restriction with chart monitoring was signed by the physician. Dr. Gillard further noted that by the licensee being under a practice restriction it could affect his ability to be insured.

MOTION: Dr. Gillard moved to grant the request for modification of the Board Order. The following paragraph replaces paragraph 2 of the Original Order: Respondent's practice is restricted in that he is prohibited from prescribing controlled substances in the State of Arizona. Board staff or its agents may conduct periodic chart reviews and/or query the Controlled Substance Prescription Monitoring Program to monitor Respondent's compliance with this Board Order.

SECOND: Dr. Krahn.

Ms. Bain questioned if a licensee prescribes medication and doesn't have a DEA license would the Board get an automatic notice.

Board staff stated that staff relies on the DEA to report to the Board, as well as the pharmacist because they must input the prescribing physician's DEA number and there are mechanisms at the pharmacy level that would prohibit someone from being able to fill that prescription.

Ms. Bain inquired if the change to the order being requested by the physician is to avoid chart reviews.

Ms. Smith confirmed that the purpose of the proposed changes was to avoid the formal chart reviews that would have been part of the original order because of the cost. This order would allow the Board to monitor the physician's compliance with the practice restrictions by conducting chart reviews and query the controlled substance prescribing program although those types of inquiries would be aimed at ensuring his compliance with the practice restrictions.

Ms. Bain noted that in the original order chart reviews were mandatory and questioned if that has now changed to being elective and only if the Board periodically decided to conduct them.

Ms. Smith explained that they would no longer be mandatory but the main issue in this case was with his prescribing practices. Board staff's position on the request for modification is the restriction from prescribing controlled substances would adequately protect the public in lieu of chart reviews on his prescribing practices.

Dr. Krahn explained that when a controlled substance prescription is written, and the expired DEA number is expired, the prescriptions wouldn't be filled and if they were to use another person's DEA number that is a very significant problem. Dr. Krahn opined that the public is protected because of the physician's surrender of his DEA number. Ms. Jones further noted that the physician has completed the medical recordkeeping and prescribing courses; which means he's in compliance with the education requirements in the consent agreement. Dr. Beyer requested clarification on whether this order does in fact contain a permanent practice restriction.

Ms. Smith confirmed that a permanent practice restriction would still be in effect.

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

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

S. GENERAL CALL TO THE PUBLIC

No individuals addressed the Board during the General Call to the Public.

T. ADJOURNMENT

MOTION: Dr. Figge moved for adjournment.

SECOND: Ms. Jones.

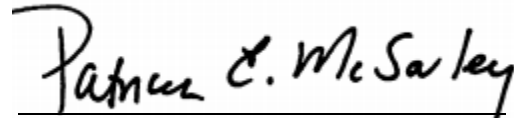
VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Beyer, Ms. Dorrell, Dr. Farmer, Dr. Gillard, Ms. Jones and Dr. Moschonas.

VOTE: 11 -yay, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The meeting adjourned at 11:34 a.m.




Patricia E. McSorley, Executive Director