



Arizona Medical Board

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE A MEETING Held on Friday, December 13, 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.

Gail Guerrero-Tucker, M.D., M.P.H., F.A.A.F.P., D.A.B.F.M.

GENERAL BUSINESS

A. CALL TO ORDER

Chairman Figge called the Committee's meeting to order at: 12:22 p.m.

B. ROLL CALL

The following Committee members were present: Dr. Figge, Ms. Dorrell, Dr. Farmer and Dr. Guerrero-Tucker.

The following Committee member was absent: Dr. Bethancourt.

ALSO PRESENT

The following Board staff participated in the virtual meeting: Patrica McSorley, Executive Director; Raquel Rivera, Deputy Director; Nicole Samaradellis, Investigations Manager and Michelle Robles, Board Operations Manager. Elizabeth Campbell, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS

Dr. Figge read the civility policy for the record.

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

- August 6, 2024 Review Committee A Minutes

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-23-0179A, TERRY R. MAFFI, M.D., LIC. #32805
Dr. Maffi was present with counsel Flynn Carey.

Board staff summarized that this case was initiated after receiving a complaint from a hospital alleging that Dr. Maffi treated a patient while impaired and without privileges at the hospital. Dr. Maffi explained that on February 1, 2023, he performed an in-office revision neck lift on patient SB. SB's original neck surgery was performed on September

15, 2022, but he had complications (a neck hematoma) that caused excess fullness and scar tissue in the neck, requiring the revision. Dr. Maffi denied that he was impaired from one glass of wine with dinner. Dr. Maffi recommended evacuating the hematoma and the ED physician agreed. Dr. Maffi stated that he used a pair of sterile scissors to release the sutures and evacuate coagulated blood which caused improvement. The ED physician ultimately intubated anyway to proceed directly to the OR for further treatment. Dr. Maffi also went to the OR but the nurse realized that he did not have privileges and the trauma surgeon took over. Dr. Maffi stated that he has had privileges at the hospital for about 18 years although in recent years, he has only exercised these privileges sporadically, since he does almost all of his surgeries at his surgery center. He explained that his privileges accidentally ended in August 2022 due to a combination of office staff oversight and lack of communication from the hospital. Board staff obtained the hospital's documentation. The hospital documented that a nurse reported that Dr. Maffi appeared to present with signs of being intoxicated which included bloodshot eyes, an odor of alcohol and redness of his face and neck. The hospital reported that Dr. Maffi was auto resigned in August of 2022 for failure to return his reappointment application. During the investigation, Dr. Maffi underwent a PHP Assessment and the Assessor determined he was safe to practice contingent upon entering in PHP monitoring for three years. As a result, effective October 27, 2023, Dr. Maffi entered into an Interim Consent Agreement for PHP Participation and he enrolled in PHP Monitoring. On January 5, 2024, the PHP Contractor notified Board staff that Dr. Maffi tested positive for alcohol on a PEth test dated December 27, 2023. The PHP Contractor stated that Dr. Maffi reported drinking non-alcoholic wine and included photos of the wine bottle. The toxicologist stated that with a sobriety date of November 14, 2023, and the blood draw 43 days later, he couldn't rule out the possibility of the small amount of PEth being residual from November 13, 2023. The toxicologist recommended another PEth and if negative, which he expected, he would accept the value as possible residual. On January 10, 2024, Dr. Maffi presented for another PEth test and it was negative. A Medical Consultant review was obtained to evaluate Dr. Maffi's treatment of SB and the Medical Consultant determined that Dr. Maffi deviated from the standard of care by treating SB after consuming alcohol and without having privileges at the hospital. SIRC reviewed the case and disagreed with Dr. Maffi's argument that he was not impaired as it was unequivocal that Dr. Maffi presented to the hospital and treated a patient after consuming alcohol. SIRC noted the impairment symptoms documented by hospital staff including a nurse and hospital security. Furthermore, Dr. Maffi admitted to consuming a Manhattan and wine with dinner. SIRC also observed the high PEth results as part of the PHP Assessment and that there was concern for a positive alcohol test while in PHP Monitoring. Dr. Maffi reported his sobriety date of November 14, 2023, despite signing and entering into the Interim Consent Agreement for PHP monitoring requiring abstinence from substances including alcohol on October 27, 2023. The Interim Consent Agreement required Dr. Maffi to enroll with a PHP Monitor within five days; therefore, SIRC also considered his self-disclosed failure to enroll with the Monitor until November 14, 2023, which was 18 days later as an additional violation of the Interim Consent Agreement. Additionally, the Monitor reported Dr. Maffi's enrollment date as November 13, 2023. SIRC stated that the Board has been consistent in issuing discipline in cases involving presenting to work impaired. Additionally, during the investigation, there were violations of the Interim Consent Agreement, that although minor when taken individually, caused SIRC concern with regard to Dr. Maffi's insight into his diagnosis and ability to abide by a Board Order. SIRC also noted that this was the second instance of an alcohol related event being investigated by the Board. Therefore, SIRC recommended a Letter of Reprimand and Three Year PHP Probation.

Mr. Carey provided an opening statement to the Committee and requested that the physician be allowed to continue monitoring confidentiality and not through disciplinary action. Mr. Carey agreed that it's not appropriate to present to work impaired but argued that there is a clear difference between impairment and the worksite and consumption.

Dr. Maffi provided an opening statement to the Committee and stated that during the incident he did not think he was impaired and thought it was okay, however he understands he could have said no and that he did not need to go in and should have

thought of the patient's safety first. Dr. Maffi stated that he is grateful for the opportunity to change and have a more appropriate understanding of how a physician should act in his community and protect his patients.

During questioning, Dr. Maffi informed the Committee of his treatment of SB and hematomas. Dr. Maffi explained that he was having dinner with his son when his patient tried to get ahold of him through his service. They couldn't get ahold of him so the patient went to the ER. Dr. Maffi confirmed that he did not have coverage and was on call. Thought it would be a quick dinner and did not think it would be a problem for his phone to be off for an hour and a half. His partner offered to cover the patient and he did not want to inconvenience her so he went to the hospital. He then informed the Committee of his treatment of SB and the procedure provided in the ER. He was surprised to find out that he did not have privileges at the hospital and he needed to provide a form of ID so a security officer accompanied him to his car for his driver's license. Dr. Maffi confirmed that he had a cocktail prior to dinner and during dinner a 9 oz glass of wine. No one at the hospital questioned his sobriety. Regarding the hospital report's comments, Dr. Maffi was surprised and opined that he felt fine.

Dr. Guerrero-Tucker commented that if you are on call there is no alcohol consumption.

Dr. Maffi stated that it goes back to his lack of insight since he was on call 24/7 and that all he had to do was tell his associates that he had a drink and could not go in.

Dr. Figge commented that knowing something could have come up, Dr. Maffi should have placed a call first. Ms. Dorrell inquired about how his monitoring has changed his practice,

Dr. Maffi stated that he has had to adjust his practice a bit. He has to stop seeing patients at 3:00 p.m. to be tested and he was angry about it at first. He now schedules meetings after 3:00 p.m. so that if he needs to cancel a meeting its better than canceling on a patient.

In closing, Dr. Maffi stated that he has changed his way of thinking and that he has become a better person and physician from going through the program.

In closing, Mr. Carey stated that there has been a lesson learned here and requested a non-disciplinary Advisory Letter with confidential SRA.

Board staff noted the FAA rules on pilots and flying and that it is similar to physicians since they both have others safety to consider.

During deliberations, Dr. Farmer opined that these violations are clear from the testimony

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

SECOND: Dr. Guerrero-Tucker.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Ms. Dorrell and Dr. Guerrero- Tucker. The following Committee member was absent: Dr. Bethancourt.

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Farmer agreed with counsel that there is a lot of agreement with regards to what happened however, disagreed with the argument of impairment versus consumption. There is inconsistency regarding the amount of alcohol consumed and in the records regarding the signs of impairment. Dr. Farmer commended the physician's insight from the program, but commented that when determining whether a confidential order is appropriate, the public safety must be considered. While on call, a physician should never be impaired and it is unacceptable. Regarding judgment, Dr. Farmer stated that

plans for coverage could have been made. Dr. Farmer further opined that turning the pager off is aggravating.

MOTION: Dr. Farmer moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Three-Year Probation, retroactive to November 13, 2023, for continued participation in the Board's PHP. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Maffi's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.

SECOND: Dr. Guerrero-Tucker.

Dr. Figge agreed that the Committee is happy with where the physician is at now, but it does not change what occurred. Dr. Figge agreed with discipline.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Ms. Dorrell and Dr. Guerrero- Tucker. The following Committee member was absent: Dr. Bethancourt.

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

G. FORMAL INTERVIEWS

1. MD-21-0541A, DAN O. HARPER, M.D., LIC. #34214
Dr. Harper was present without counsel.

Board staff summarized that The Board initiated this case after receiving Dr. Harper's application for renewal wherein he disclosed disciplinary action by the Medical Board of California. On October 1, 2021, the California Board issued a reprimand and disciplinary order restricting Dr. Harper from making or issuing any written exemptions from immunization, or any other written statements providing that any child is exempt from the requirements. The cause of discipline against Dr. Harper was due to repeated acts of negligence by providing permanent vaccine exemption without verifying children's medical history. The allegation is that Dr. Harper provided vaccine exemption to four minor children and failed to obtain or review any medical records. Dr. Harper issued permanent exemptions from all vaccines for all four minor children. One month later, one of the children developed whooping cough. Dr. Harper held a license with the Arizona Homeopathic Board which was issued on August 19, 2004 with an expiration date of August 31, 2020; however, the license was listed with an Active status; there were no disciplinary actions reported by the Homeopathic Board. SIRC returned this case for further investigation to consider whether to assert jurisdiction and to direct the Board to initiate arbitration proceedings if the Homeopathic Board asserted jurisdiction too. In June 2023, the Board voted to assert jurisdiction for the complaint against Dr. Harper. The Board voted that it would move to initiate arbitration proceedings in the event the Homeopathic Board also asserted jurisdiction. Notification was sent to the Homeopathic Board as the Board did not receive a response to the notification sent in June 2023, regarding dual jurisdiction. The notification informed the Homeopathic Board that this Board would retain jurisdiction based on their lack of response. During the investigation, Board staff became aware of additional action taken against Dr. Harper's California license. On March 6, 2023, Dr. Harper entered into a Stipulated Settlement and Disciplinary Order with the California Board, and was revoked; however, the revocation was stayed, and Dr. Harper was placed on three year probation along with other terms and conditions. The Stipulation required Dr. Harper to complete 60 Category 1 CME hours per year with emphasis on the risks and benefits of vaccinations and contraindications to vaccinations; reimbursement of investigation costs in the amount of \$9,500; prohibited from making or issuing any written exemption from immunization; and prohibited from supervising physician assistants and advanced practice nurses. Board staff reviewed the Order which indicated the action taken by the California Board against Dr. Harper's license was based on the review of seven (7) patient charts. The California Board found that Dr. Harper granted permanent vaccine exemptions based on irrelevant medical history with repeat negligent acts of the same; and demonstrated incompetence in using family history as justification towards providing a permanent vaccine exemption.

Board staff noted that the care rendered to the seven (7) patients occurred in 2016, 2017, and 2018, prior to the disciplinary action imposed by the California Board in 2021. The California Order outlined that the Board considered the two prior disciplinary actions in consideration of the degree of discipline most recently issued to Dr. Harper. SIRC noted that the California Board issued two disciplinary actions for conduct occurring from 2017 to 2018. SIRC also noted that Dr. Harper was previously issued a stayed revocation and placed on probation in 2017, in California, related to his performance of alternative treatments, which was terminated in March of 2020. SIRC observed that there has not been any evidence that Dr. Harper has written vaccine exemptions since the 2021 California action. SIRC noted that Dr. Harper continues to reside and work in California.

Dr. Harper provided an opening statement and informed the Committee of the California law for vaccine exemptions, statistics on autoimmunity and concerns regarding vaccines. Dr. Harper informed the Committee of how his case came before the California Medical Board and that he received a Letter of Reprimand and Probation. Dr. Harper informed the Committee that he is compliant with the Order and no longer provides vaccine exemptions. Dr. Harper stated that there were no complaints made by his patients.

During questioning, Dr. Harper stated that he obtained an Arizona to practice homeopathic medicine and he is contemplating moving here.

Dr. Guerrero-Tucker noted that a father of one of the patients did file a complaint.

Dr. Harper confirmed that the father did file a complaint and explained what occurred. Dr. Harper further noted that the mother came in for four vaccine exemptions and the family dynamics between the mother and father at that time. Dr. Harper stated that he is not opposed to vaccines but opined that they need to be done safely. Dr. Harper confirmed that he has renewed his homeopathic license.

Dr. Farmer inquired about the allegation that he did not obtain the patient's records.

Dr. Harper explained that he did obtain records in five of the cases and in two he just obtained history from the parents.

In closing, Dr. Harper found his protocols with the Arizona holistic board and tried to provide the information to California.

During deliberations, Dr. Guerrero-Tucker opined that there was a violation.

MOTION: Dr. Guerrero-Tucker moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(p) for reasons as stated by SIRC.

SECOND: Ms. Dorrell.

Dr. Farmer inquired about the "shall" language in the statute.

Ms. Campbell explained that the violation is regarding action taken by another State Board but that the Board is not required to mirror the action and has discretion.

Dr. Farmer stated that it is a fact that the California Board took action and that supports this violation. This is how the statute is written and it is fact. Dr. Figge noted that there were two actions taken by the California Board.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Ms. Dorrell and Dr. Guerrero-Tucker. The following Committee member was absent: Dr. Bethancourt.

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Guerrero-Tucker commented that California had an appropriate response but inquired if the Board must give the Letter of Reprimand or can the Board issue an Advisory Letter. Dr. Figge clarified that it is at the discretion of the Board.

MOTION: Dr. Guerrero-Tucker moved to issue an Advisory Letter for action taken by the California Medical Board. 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. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

SECOND: Ms. Dorrell.

Dr. Farmer commented that there are a lot of complexities behind this but opined that there was some effort to obtain a reason, and the physician has a thought process behind this, which is mitigating.

VOTE: The following Committee members voted in favor of the motion: Dr. Farmer, Ms. Dorrell and Dr. Guerrero- Tucker. The following Committee member voted against the motion: Dr. Figge. The following Committee member was absent: Dr. Bethancourt.

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

MOTION PASSED.

GENERAL BUSINESS

H. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

No discussion.

I. ADJOURNMENT

MOTION: Ms. Dorrell moved for adjournment.

SECOND: Dr. Farmer.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Ms. Dorrell and Dr. Guerrero- Tucker. The following Committee member was absent: Dr. Bethancourt.

VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The meeting adjourned at 2:01 p.m.



A handwritten signature in black ink that reads "Patricia E. McSorley". The signature is written in a cursive style and is positioned above a horizontal line.

Patricia E. McSorley, Executive Director