



## ARIZONA MEDICAL BOARD

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### DRAFT MINUTES FOR SUMMARY ACTION TELECONFERENCE MEETING

Held on Wednesday, December 18, 2013

9545 E. Doubletree Ranch Road, Scottsdale, Arizona 85258

#### Board Members

Gordi S. Khera, M.D., F.A.C.C., Chair

Jody L. Jenkins, M.D., Vice Chair

Andrea E. Ibàñez, Member At Large

Jodi A. Bain, Esq.

James M. Gillard, M.S., M.D., F.A.C.E.P., F.A.A.E.M.

Ram R. Krishna, M.D.

Douglas D. Lee, M.D.

Richard T. Perry, M.D.

Wanda J. Salter, RN

#### CALL TO ORDER

Dr. Khera called the meeting to order at 5:03 p.m.

#### ROLL CALL

The following Board members participated telephonically: Ms. Bain, Dr. Gillard, Ms. Ibàñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, and Ms. Salter. The following Board member was absent: Dr. Perry.

#### CALL TO THE PUBLIC

Dr. Falconer and Attorney Bart Peach addressed the Board during the Call to the Public. Dr. Falconer summarized for the Board what gave rise to the Illinois Order temporarily suspending his license. He explained that the investigation did not arise from any clinical complaints, but more administrative issues involving a MedSpa in Missouri where he served as Chief Executive Officer. Dr. Falconer stated that after consulting with legal counsel and becoming aware that giving false information to a federal agent was considered a felony offense, he fully cooperated with the investigation. Mr. Peach asked that the Board rescind the summary suspension of Dr. Falconer's Arizona medical license. He stated that if the Board planned to mirror the Illinois Order by limiting Dr. Falconer's practice to emergency medicine only, that botox is not an issue in Arizona and that it would be redundant to place that additional restriction on his license.

#### TIME SPECIFIC MATTER

##### CONSIDERATION OF SUMMARY ACTION

1. MD-12-1493A, Alaaeldin A. Babiker, M.D, LIC. #28043

Dr. Krishna was recused from this case. Dr. Babiker was not present during the Board's consideration of this matter.

Erinn Downey, Investigator, summarized that this case stemmed from a quality of care complaint submitted to the Board by a patient. She stated that Dr. Babiker failed to adequately respond to the complaint, and that he was subsequently interviewed by Board staff at which time he admitted to taking methadone and Adderall for back pain and sleep apnea. Board staff obtained Dr. Babiker's treatment records and noted that one of his providers had documented that Dr. Babiker was advised to obtain prescriptions from only one treating provider, to use only one pharmacy, to lock up his medications, and to obtain counseling because his wife had been taking his medication without permission. An extensive query into the Controlled Substance Prescription Monitoring Program (CSPMP) regarding Dr. Babiker's wife revealed that he had been prescribing her controlled substances since 2008.

Ms. Downey informed the Board that Dr. Babiker was referred to the Board's Physician Health Program (PHP) and that he initially refused to undergo an assessment. Dr. Babiker later completed the assessment and based on the complexity of the case, a positive drug test, and failure to admit drug diversion, he was referred for an intensive evaluation. Dr. Babiker refused to undergo the evaluation, and Board staff received two additional complaints alleging that Dr. Babiker allowed an unlicensed individual to provide services at his practice in his absence. Board staff performed a site inspection and discovered Dr. Babiker's office to be in disarray, full of patients, and with unsanitary materials strewn on the floor including

used syringes and dirty cotton balls. After the site inspection was completed, Dr. Babiker agreed to undergo the intensive evaluation and presented to Hazeldon Springbrook where he was diagnosed with opioid dependence, alcohol abuse, alprazolam abuse, and amphetamine abuse. Hazeldon Springbrook found that Dr. Babiker was unsafe to practice and recommended that he undergo treatment. The Board's PHP Monitor agreed with the recommendations. Board staff attempted to offer Dr. Babiker an Interim Practice Limitation and the physician has not responded.

Jennifer Boucek, Assistant Attorney General, clarified for the Board that the statutory grounds for taking summary action against the licensee included violations of A.R.S. §32-1401(27)(f)(g)(h) and (jj).

**MOTION: Dr. Khera moved to summarily suspend Dr. Babiker's medical license based on the finding that the public health, safety, or welfare imperatively requires emergency action by the Board.**

**SECOND: Ms. Ibáñez**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Lee, and Ms. Salter. The following Board member was recused: Dr. Krishna. The following Board member was absent: Dr. Perry.**

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

**MOTION PASSED.**

Board members instructed Board staff to refer the matter to the Arizona Child Protective Services as well as the Arizona Board of Nursing.

## **CONSIDER RESCINDING SUMMARY SUSPENSION ORDER AND ISSUING A PRACTICE RESTRICTION**

2. MD-13-1181A, Erick A. Falconer, M.D., Lic. #45505

Ms. Downy presented this matter to the Board, stating that the Board had summarily suspended Dr. Falconer's license on December 11, 2013 based on the Illinois Board's temporary license suspension. Ms. Downy pointed out that Dr. Falconer failed to disclose the pending Missouri investigation on his initial license application in Arizona. She explained that had he done so, he would not have been granted an Arizona medical license. Subsequent to the Board's summary suspension of Dr. Falconer's license, his legal counsel submitted documents to the Board indicating that the Illinois Circuit Court entered into an Order permitting Dr. Falconer to only practice emergency medicine and prohibits him from administering botox while the Illinois investigation is pending.

Ms. Boucek informed the Board that its previous action was taken under statutory requirement pursuant to A.R.S. §32-1451.02.B. She stated that since that time, the physician has successfully obtained an Order from the Illinois Court that prevents the Illinois Board from enforcing their Order, effectively lifting the suspension and restricting the physician's scope of practice in Illinois. Ms. Boucek explained that the Arizona Board did proceed under two different statutes as the basis for its previous action in summarily suspending the license; specifically, action taken by another state and commission of a felony in violation of A.R.S. §32-1401(27)(o) and (d). Ms. Boucek further informed the Board that it can agree to rescind the summary suspension and order a restriction of the license according to terms it believes are necessary to protect the public health, safety, or welfare.

**MOTION: Dr. Lee moved to enter into Executive Session to receive legal advice.**

**SECOND: Dr. Krishna**

**VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

The Board entered into Executive Session at 5:20 p.m.

The Board returned to Open Session at 5:29 p.m.

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

Dr. Krishna expressed concern that the physician misrepresented himself, and spoke in favor of having the matter referred to Formal Hearing.

**MOTION: Dr. Krishna moved to refer the matter to Formal Hearing while the summary suspension remains in effect.**

**SECOND: Dr. Khera**

Dr. Lee echoed Dr. Krishna's concerns. Dr. Lee additionally expressed concern regarding the allegations involving inappropriate sexual relationship with a patient and failure to treat a patient in the emergency room. He questioned what precautions the Board could take to protect the emergency room patients in Yuma, Arizona to prevent a potentially similar occurrence. Ms. Boucek stated that the Board has to have substantial evidence to support their decision and action.

**MOTION: Dr. Lee moved to enter into Executive Session to receive legal advice.**

**SECOND: Dr. Khera**

**VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.  
MOTION PASSED.**

The Board entered into Executive Session at 5:34 p.m.  
The Board returned to Open Session at 5:44 p.m.  
No legal action was taken by the Board during Executive Session.

Dr. Krishna and Dr. Khera withdrew the previous motion.

Mr. Peach was given an opportunity to make a statement regarding the allegations in this case. He stated that the Board's summary suspension Order was based on what was presented to the Board at its previous meeting. He stated that this involved two factors; specifically, that the Board was statutorily mandated to summarily suspend Dr. Falconer based on the Illinois action, and the second factor involved the felony conviction. Mr. Peach explained that the summary suspension in Illinois was deemed improper by an Illinois Court, thereby nullifying the Arizona Board's summary suspension. Mr. Peach further stated that the Arizona Board has grounds for disciplining the physician based on the felony conviction, but that there are no grounds to summarily suspend his license at this time. He stated that there is currently no substantial evidence to support the allegations, and requested that the Board lift the summary suspension for lack of grounds.

**MOTION: Dr. Gillard moved to rescind the summary suspension of Dr. Falconer's Arizona medical license.**

**SECOND: Dr. Khera**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, and Ms. Salter. The following Board member was absent: Dr. Perry.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

**MOTION: Dr. Lee moved to impose a Practice Restriction on Dr. Falconer's Arizona medical license to mirror the current Illinois Order in that Dr. Falconer may only practice emergency room medicine through his employment group and he may not administer botox during pendency of the Illinois investigation. The Board makes this motion on the grounds that the public health, safety, or welfare imperatively requires emergency action by the Board.**

**SECOND: Dr. Jenkins**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, and Ms. Salter. The following Board member was absent: Dr. Perry.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

The meeting adjourned at 5:57 p.m.



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Patricia E. McSorley, Interim Acting Executive Director