



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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DRAFT MINUTES FOR SPECIAL TELECONFERENCE MEETING Held on Thursday, March 5, 2015 9545 E. Doubletree Ranch Road • Scottsdale, Arizona

Board Members

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

Richard T. Perry, M.D., Vice-Chair

Ram R. Krishna, M.D., Secretary

Jodi A. Bain, Esq.

Marc D. Berg, M.D.

Donna S. Brister

R. Screven Farmer, M.D.

Robert Fromm, M.D.

Paul S. Gerding, Esq.

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

Edward Paul, M.D.

Wanda J. Salter, RN

GENERAL BUSINESS

A. CALL TO ORDER

Dr. Khera called the meeting to order at 6:18 p.m.

B. ROLL CALL

The following Board members participated telephonically: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Mr. Gerding, Dr. Gillard, Dr. Khera, Dr. Krishna, Dr. Paul, Dr. Perry, and Ms. Salter. The following Board member was absent: Dr. Fromm.

ALSO PRESENT

Stuart Goodman, Lobbyist, and Christopher Munns, Assistant Attorney General ("AAG"), Solicitor General's Office, participated telephonically. Present among Board staff include: Carrie Smith, AAG; Anne Froedge, AAG; Patricia E. McSorley, Executive Director; Alicia Cauthon, Assistant to the Executive Director; Twana Fairbourn, Licensing Assistant Manager; Anita Shepherd, Investigations Manager; William Wolf, M.D., Chief Medical Consultant; James Gentile, Chief Information Officer; Mary Bober, Board Operations Manager; Amanda Schwabe, Board Coordinator; and Andrea Cisneros, Staff Investigational Review Committee Coordinator.

C. CALL TO THE PUBLIC

Individuals that addressed the Board during the call to the public appear beneath the matter referenced.

D. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING THE MATTER OF EDGARDO D. ZAVALA-ALARCON, M.D.

- Consideration of Settlement Offer for Case #MD-13-0426A

Drs. Michael Desvigne and Carlos Mata spoke during the call to the public in support of Dr. Zavala-Alarcon. Dr. Zavala-Alarcon was present with legal counsel, Mr. Fred Cummings. AAG Froedge was present on behalf of the State.

AAG Froedge informed the Board that this matter is current scheduled for Formal Hearing on April 7-10, 2015. She stated that Mr. Cummings had requested a settlement conference on behalf of the physician pursuant to A.R.S. § 31-1092.06, and that he proposed resolution of the case in the form of probation. AAG Froedge summarized that this matter involved death of a patient after having undergone liposuction in the physician's office. She stated that if the Board declines the settlement proposal, she will present evidence at the Formal Hearing to show that Dr. Zavala-Alarcon deviated from the standard of care in relation to patient selection, the location where the surgery was performed, post-procedure patient management, as well as incomplete documentation. AAG Froedge added that the staff opposes the proposed settlement, given the seriousness of the allegations against the physician.

Mr. Cummings addressed the Board, stating that the Board's Medical Consultant ("MC") who initially reviewed this case found that there was no deviation from the standard of care. He stated that after the Board sent the matter back for further investigation, subsequent reviews identified deviations from the standard of care by MCs who specialize in plastic surgery and internal medicine. Mr. Cummings commented that without allowing the physician the opportunity to demonstrate his competency, proceeding towards revocation is not a remedy within the normal course for how this Board has operated in the past. Mr. Cummings added that the physician wants the ability to demonstrate to the Board his ability to practice safely, that there have been no additional complaints filed against the physician, and that Dr. Zavala-Alarcon has made significant changes to his practice while taking into consideration the concerns raised by the Board's reviewers.

Dr. Farmer stated that the proposed settlement is far short of adequate. He stated that the case was egregious from a surgical, anesthetic, and common sense perspective. Dr. Farmer added that the physician's conduct was out of line in terms of indications for surgery, monitoring of the patient, procedures for anesthesia, as well as the pre and post procedure work up and follow up. Dr. Farmer spoke in favor of rejecting the proposal. Dr. Krishna concurred with Dr. Farmer's statements, and stated that there has been evidence of patient harm in this case. He spoke in favor of rejecting the proposal and allowing the case to proceed to Formal Hearing. Dr. Khera also spoke in favor of rejecting the proposed settlement. He commented that this matter involved egregious conduct on the part of the physician, and that proceeding to Formal Hearing would be appropriate.

MOTION: Dr. Paul moved to decline the settlement offer and continue with the Formal Hearing as scheduled.

SECOND: Dr. Krishna

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Berg, Ms. Brister, Dr. Farmer, Mr. Gerding, Dr. Gillard, Dr. Khera, Dr. Krishna, Dr. Paul, Dr. Perry, and Ms. Salter. The following Board member abstained from the vote: Ms. Bain. The following Board member was absent: Dr. Fromm.

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

MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING PENDING LEGISLATION

MOTION: Dr. Khera moved to enter into Executive Session pursuant to

SECOND: Dr. Krishna

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 6:38 p.m.

The Board returned to Open Session at 7:16 p.m.

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

Ms. McSorley informed the Board that to date, there have been 14 fully completed files out of the 3,100 licenses involved in the licensing lookback. Board members discussed Senate Bill 1458

("SB1458"), and the proposal for the Board to perform a request for information regarding potentially outsourcing physician licensure.

Dr. Farmer expressed significant concerns regarding the public safety implications involved with outsourcing the licensing of Arizona physicians. He stated that the Board's mission is to protect the public and that needs to be the Board's number one focus. Dr. Farmer added that there is no credentialing service with a track record for such an approach nor has there been a company with any type of credibility for being able to do it in a safe fashion and that outsourcing of licensing has not been proven to be sufficient in any state. Dr. Farmer commented that he has very grave reservations of the safety implications to the public in terms of this approach for licensing physicians in Arizona.

Ms. Brister agreed with Dr. Farmer's comments and stated that she shares the same concerns. Dr. Gillard echoed Dr. Farmer's concerns and stated that outsourcing licensing can become problematic. Dr. Krishna stated he feels that the Executive Director is very competent and should speak on behalf of the Board to the Legislature. Mr. Gerding suggested providing the Legislature with an update as to the figures reported by Ms. McSorley in terms of the progress made regarding the look back process. Dr. Khera proposed drafting a letter to the Legislature outlining the performance of the Agency to date and to demonstrate the Board's concerns regarding public safety implications. Dr. Farmer recommended that the Board prepare two separate letters; one regarding the look back progress, and the second concerning the public safety implications of outsourcing the licensure process. Dr. Farmer explained that he has grave concerns regarding contracting out licensing and believes that these concerns exist independent of a much more complex issue concerning the progress made in the look back process.

Dr. Khera requested that Ms. Bain and Dr. Farmer aid the Executive Director in drafting the letters, which he stated are to be disseminated to the Senate, House, and Governor's Office.

The meeting adjourned at 7:37 p.m.



Patricia E. McSorley
Executive Director