Arizona Medical Board

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FINAL MINUTES FOR
REGULAR SESSION MEETING
Held on Wednesday, February 1, 2012
9535 E. Doubletree Ranch Road · Scottsdale, Arizona

Board Members
Douglas D. Lee, M.D., Chair
Amy J. Schneider, M.D., F.A.C.O.G., Secretary
James M. Gillard, M.S., M.D., F.A.C.E.P., F.A.A.E.M.
Andrea E. Ibáñez
Jody L. Jenkins, M.D.
Gordi S. Khera, M.D.
Ram R. Krishna, M.D.
Harold Magalnick, M.D.
Germaine Proulx
William J. Thrift, M.D.

CALL TO ORDER
Dr. Lee called the meeting to order at 8:00 a.m.

ROLL CALL
The following Board members were present: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.

CALL TO THE PUBLIC
Individuals who addressed the Board during the call to the public appear beneath the case referenced.

EXECUTIVE DIRECTOR'S REPORT
Lisa Wynn, Executive Director, reported to the Board that the PA Rules generated very minimal public comment after having been posted to the Boards' websites and reaching out to a number of stakeholders. She stated that the PA Rules will be moving forward for the final opportunity for public comment. Ms. Wynn stated that she participated in the Arizona Substance Abuse Partnership. She stated that Carol Peairs, M.D., Medical Consultant, has agreed to serve on the panel and that the Partnership will be looking at the prescribing component involved in prescription drug overdoses while working with stakeholders in an effort to reduce the number of accidental drug overdose deaths in Arizona. Ms. Wynn reported that she presented at the University of Arizona and spoke to the residents in January. It was an informal opportunity to answer questions and obtain feedback regarding the Board's processes. Ms. Wynn stated that they talked about prescription drugs and the pharmacy database, and she informed the Board that she is working with other prescribing boards to minimize the barriers for physicians to use the database efficiently. Ms. Wynn reported that under the leadership of Paul Parker, Licensing Office Manager, Licensing staff has reduced the average number of days to approve a new license to 15 days. She reported that in January, the Licensing Office approved 159 new licenses.

CHAIR'S REPORT
Dr. Lee informed the Board that the Federation of State Medical Boards is scheduled for April 2012 and will be held in Dallas, Texas. He instructed Board members to contact Ms. Wynn if they are interested in attending the meeting.

LEGAL ADVISOR'S REPORT
Dr. Scott Forrer spoke during the call to the public regarding a Formal Hearing matter. Jennifer Boucek, Assistant Attorney General, Legal Advisor, reported that her office continues to deal with staffing issues and that the current caseload is under control.

ELECTION OF BOARD OFFICERS
Ms. Wynn announced the results of the Election: Dr. Schneider, Chair; Dr. Lee, Vice Chair; Dr. Khera, Secretary; and Ms. Ibáñez, Member-At-Large.

PHYSICIAN'S RESPONSIBILITY TO TREAT ER REFERRALS
Ms. Boucek noted that the issue was presented at a previous meeting, in which the Board questioned whether a physician is responsible to treat a patient referred by the Emergency Room (ER) without payment in a non-emergency situation. Ms. Boucek

provided an overview of relevant case law. Dr. Magalnick stated that based on an individual hospital's bylaws, the physician is required to see the patient in follow up at least one time. Dr. Gillard stated that ER physicians are required to conduct a screening exam for patients under federal law (EMTALA) and that if a physician is on call he is required to come in, see the patient and can bill them. Dr. Thrift stated that it is difficult when the patient calls a specialist for follow up and are informed that the first office visit may cost a few hundred dollars and the patient is unable to pay and the patients then return to the ER. He stated that when patients are unable to pay their financial problems then become the physicians'. He stated that he does not believe that this issue is a problem statutorily. Dr. Khera recalled a letter published by MICA stating that if it is a non-emergency situation, a physician may choose to not see a patient for ER follow up if the patient refuses to pay. Dr. Khera stated that he cannot recall the specifics of the letter, and requested that the Executive Director look into the matter further.

BOARD MEMBER TIPS

Dr. Krishna stated that the Board has come a long way and is no longer chastised as it had been in the past. Dr. Krishna stated that due process is very important and that it is important for the Board to remain consistent in its deliberations and actions. He stated that the Board's counsel has been excellent in identifying issues regarding proper notice to physician's regarding potential violations. Dr. Krishna complimented the Executive Director and staff regarding the negotiation of Consent Agreements. He stated that the Arizona Medical Association has been very happy with the Board's due process. Dr. Lee stated that he has learned over the years through serving on the Board and by having exceptional Board members guide him through the processes, that timing and patience is very important. He noted that a timing system has been put in place to keep the Board on track during Formal Interviews and that there has been a decrease in the number of physicians appearing for Formal Interviews. Dr. Lee stated that the purpose of the Formal Interview is not to go over all of the facts that are contained in the investigative file, but to hear from the physician to clarify their decision making in the case. Dr. Lee stated it is also important for the Board to not go off track and forget what the case is about. He stated that it is important for the Board to hear from both sides and to adjudicate the case by the facts presented. Dr. Thrift thanked the physicians for their tips and stated that he appreciated Dr. Lee's leadership as Chairman of the Board.

APPROVAL OF MINUTES

MOTION: Dr. Krishna moved to approve the December 14, 2011 Regular Session Meeting, including Executive Session.
SECOND: Ms. Proulx
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

ADVISORY LETTERS

MOTION: Dr. Krishna moved to issue an Advisory Letter in item numbers 1-5, 7, 9, 10, 12, 14, 16-18, 20, 21, 24, and 26.
SECOND: Ms. Ibáñez
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0966A	PATRICIA L. CLARKE, M.D.	26877	Issue an Advisory Letter for failure to follow up potentially significant concerns identified in a history and physical, and for inadequate medical records. This matter does not rise to the level of discipline.
2.	MD-11-1381A	PAUL M. GENUISE, M.D.	26186	Issue an Advisory Letter for failure to maintain adequate medical records. This matter does not rise to the level of discipline.
3.	MD-11-0813A	KRISHIKESH S. IYENGAR, M.D.	40613	Issue an Advisory Letter for performance of a provocative stress test without knowing that a patient had a stable hemoglobin and hematocrit. This matter does not rise to the level of discipline.
4.	MD-11-1045A	GABRIEL F. RAMIREZ, M.D.	35532	Issue an Advisory Letter for action taken by the state of Colorado. This matter does not rise to the level of discipline.
5.	MD-11-0783A	CHARLES J. SAULTS, M.D.	3175	Issue an Advisory Letter for misrepresenting himself on a Notice of Supervision form to the Board, and for failure to report unauthorized use of a prescription pad. This matter does not rise to the level of discipline.
6.	MD-11-0836A	SWARNJIT SINGH, M.D.	24762	Dismiss.

Dr. Singh and attorney Rick Delo spoke during the call to the public. Board members observed that Dr. Singh allegedly failed to report capsule endoscopy results to the patient in a timely manner. Dr. Khera noted that the patient was already receiving treatment while other investigations were being conducted, including the capsule endoscopy. Dr. Khera believed that this case involved more of a communication problem rather than a quality of care issue, and spoke in favor of dismissal. Dr. Schneider pointed out that the patient mentioned in his complaint that he was called by the office staff and informed of the normal test results.

MOTION: Dr. Khera moved for dismissal.
SECOND: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	MD-11-0849A	PATRICIA S. SULLIVAN, M.D.	40062	Issue an Advisory Letter for failure to follow up hematuria in a timely fashion and for inadequate medical records. This matter does not rise to the level of discipline.
8.	MD-10-1515A	JAMES E. MACIULLA, M.D.	18726	Dismiss.

Dr. Schneider was recused from this case. Attorney Chris Smith spoke during the call to the public on behalf of Dr. Maciulla.

MOTION: Dr. Jenkins moved for dismissal.
SECOND: Dr. Krishna

Dr. Krishna spoke in favor of the motion and noted that systems have been put in place to address the Board's recordkeeping concerns. Dr. Krishna stated that he remains bothered by the fact that there were mechanisms in place for the physician to have documented in the chart at the time of the incident. Dr. Lee commented that he did not want to see the Board use electronic medical records as reasoning for the Board to excuse a normal process of writing down and documenting patient care in the chart.

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-11-1100A	DANIEL H. DOWNS, M.D.	23384	Issue an Advisory Letter for failure to completely remove a drain following surgery. This matter does not rise to the level of discipline.

Dr. Lee was recused from this case.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-11-1029A	ANDRE C. MATTHEWS, M.D.	12836	Issue an Advisory Letter for failure to sufficiently evaluate a patient with a revision knee arthroplasty with multiple risk factors for postoperative infection and for inadequate medical records. This matter does not rise to the level of discipline.

CB and MB spoke during the call to the public. Dr. Matthews and attorney Aaron Bradford also spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-11-0702A	MEHRDAD SARIRIAN, M.D.	34229	Issue an Advisory Letter for failure to order a CT scan or an echocardiogram in a timely fashion and for failure to evaluate coronary arteries in a timely fashion. This matter does not rise to the level of discipline.

Dr. Jenkins noted that the Staff Investigational Review Committee (SIRC) report stated that the cardiologist and anesthesiologist were referred to the Board for review. She noted that the case did not involve an anesthesiologist and stated that the radiologist should have been referred to the Board. Pat McSorley, Investigations Manager, informed the Board that the report should have stated that the cardiologist and radiologist were referred for review, and she reported that the cases have already been adjudicated by the Board.

MOTION: Dr. Jenkins moved to issue an Advisory Letter for failure to order a CT scan or an echocardiogram in a timely fashion and for failure to evaluate coronary arteries in a timely fashion. This matter does not rise to the level of discipline.
SECOND: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-11-1076A	ROBERT L. BESHANY, M.D.	32472	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.
13.	MD-11-1000A	STEVEN P. GALASKY, M.D.	13631	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

RB spoke during the call to the public. Dr. Gillard stated that the standard of care in this case would have been to admit the patient for further work up of a possible transient ischemic attack. Dr. Gillard noted that Dr. Galasky stated in his response to the Board that the patient declined his recommendation for hospital admission. Dr. Jenkins observed that there was no documentation to that effect in the medical record. Dr. Khera agreed that there was no documentation that the patient was offered hospital admission or a signed form indicating that the patient was discharged against medical advice.

MOTION: Dr. Khera moved to issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.
SECOND: Dr. Jenkins
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
14.	MD-11-0641A	CHARLES S. LIPSKIND, M.D.	17076	Issue an Advisory Letter for lack of follow up of an abnormal nuclear stress test. This matter does not rise to the level of discipline.
15.	MD-11-1146A	GIANG T. PHAN, M.D.	34099	Dismiss.

Dr. Phan spoke during the call to the public. Dr. Jenkins recognized the frustrations involved with working as a healthcare provider in the prison system. Dr. Jenkins stated that she believed this case involved more of a system issue than a quality of care concern, and she spoke in favor of dismissing the case.

MOTION: Dr. Jenkins moved for dismissal.
SECOND: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-11-1118A	MICHAEL E. STEVENS, M.D.	29331	Issue an Advisory Letter for failing to appropriately track and provide follow up regarding pap-smear testing, lack of staff supervision, and inadequate medical records. This matter does not rise to the level of discipline.
17.	MD-11-1299A	THOMAS BROUSSEAU, M.D.	30331	Issue an Advisory Letter for failing to properly supervise a Medical Assistant prior to administering vaccines to a pediatric patient. This matter does not rise to the level of discipline.
18.	MD-11-1046A	WENDI I. KULIN, M.D.	43119	Issue an Advisory Letter for failure to respond to a patient's concern about a medication reaction in a timely manner. This matter does not rise to the level of discipline.
19.	MD-11-0691A	JOSE N. ORTIZ, M.D.	14449	Issue an Advisory Letter for failure to obtain and review old records, for failure to perform a pharmacy query or urine drug screen prior to prescribing 60 tablets of Oxycodone 30mg to a 25 year-old male complaining of chronic back pain. This matter does not rise to the level of discipline.

SL spoke during the call to the public. Dr. Gillard noted that the pharmacy record showed that the patient did not fill the prescription written by Dr. Ortiz. Dr. Lee stated that the issue identified in the case was the fact that Dr. Ortiz wrote an inappropriate number of Oxycodone for the patient.

MOTION: Dr. Krishna moved to issue an Advisory Letter for failure to obtain and review old records, for failure to perform a pharmacy query or urine drug screen prior to prescribing 60 tablets of Oxycodone 30mg to a 25 year-old male complaining of chronic back pain. This matter does not rise to the level of discipline.
SECOND: Dr. Khera
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
20.	MD-11-1120A	RYAN R. STRATFORD, M.D.	33881	Issue an Advisory Letter for delay in diagnosis and treatment of postoperative bleeding. This matter does not rise to the level of discipline.
21.	MD-11-1140A	ROBERT K. BARNETT, M.D.	32687	Issue an Advisory Letter for failure to perform an adequate physical examination, for prescribing HC3 to a patient without a signed consent form, and for inadequate medical records. This matter does not rise to the level of discipline.
22.	MD-11-1285A	BRADLEY J. FOLKESTAD, M.D.	19824	Dismiss.

Dr. Gillard noted that the patient was prescribed medication to which she was allergic, and that the error was corrected before the patient filled the prescription. Dr. Gillard spoke in favor of dismissal. Dr. Schneider noted that Dr. Folkestad admitted that he did not check the patient's medication allergies in the chart when he wrote the initial prescription.

MOTION: Dr. Krishna moved for dismissal.
SECOND: Ms. Proulx
VOTE: 6-yay, 4-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
23.	MD-11-0737A	BERNADETTE M. FRANCOIS, M.D.	21733	Issue an Advisory Letter for leaving signed blank scripts for her staff to use in her absence. This matter does not rise to the level of discipline.

Dr. Thrift noted that Dr. Francois reported the PA's conduct to law enforcement and was instructed to keep the matter confidential until the investigation is complete. Therefore, Dr. Thrift spoke against sustaining a violation of A.R.S. §32-1401(27)(oo). He stated that the second issue identified in the case involving Dr. Francois leaving signed blank scripts for her staff to use in her absence is clearly a violation, and that an Advisory Letter is warranted.

MOTION: Dr. Thrift moved to issue an Advisory Letter for leaving signed blank scripts for her staff to use in her absence. This matter does not rise to the level of discipline.
SECOND: Dr. Jenkins

Dr. Schneider spoke against the motion and stated that the PA should have been reported to the Board in addition to law enforcement. Dr. Schneider questioned whether there was any written proof that the physician was told to keep the matter confidential. Ms. McSorley informed the Board that a supervising physician is required to notify the Board within thirty days of terminating a PA. Board staff reported that Dr. Francois notified the Board of the PA's termination one year after notifying law enforcement.

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
24.	MD-11-1195A	RICHARD L. KELLY, M.D.	20150	Issue an Advisory Letter for failure to discuss therapeutic options with a patient whose PSA increased over the course of a year. This matter does not rise to the level of discipline.
25.	MD-11-0739A	EVAN W. KLIGMAN, M.D.	26437	Issue an Advisory Letter for directly or indirectly assisting in the violation of a Board Order. This matter does not rise to the level of discipline.

Dr. Thrift stated he did not believe that Dr. Kligman tried to aid and abet the physician in practicing medicine in violation of his Board Order. Ms. Ibáñez questioned whether the physician's Board Order was available to the public. Board staff informed the Board that Board Orders appear on the physician's profile on the Board's website for public viewing. Dr. Thrift stated that an Advisory Letter is not warranted because the physician has already been made aware of the Board's concerns.

MOTION: Dr. Thrift moved for dismissal.
SECOND: Dr. Gillard

Board members questioned whether Dr. Kligman was required to obtain the Board Order prior to hiring the physician to work in his clinic. Ms. Wynn stated that there is no statutory requirement to do so. Dr. Krishna spoke against the motion and stated that Dr. Kligman should have been aware of the physician's restrictions prior to allowing him to work in his clinic. Dr. Schneider pointed out that Dr. Kligman indicated he was aware of the restriction as the physician had initially presented him with his Interim Order. Dr. Lee stated that if the physician reported to Dr. Kligman that he was prohibited from performing the injections, Dr. Kligman could have further looked into the issue. Celina Shepherd, Investigator, informed the Board that Dr. Kligman indicated that the physician was teaching him trigger point injections, and that to his knowledge, he was not performing them at his clinic. Dr. Jenkins expressed concern with the fact that the physician was teaching trigger point injections when he had been restricted from performing pain injection related therapy because he was found to have been performing it incorrectly.

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

MOTION: Dr. Krishna moved to issue an Advisory Letter for directly or indirectly assisting in the violation of a Board Order. This matter does not rise to the level of discipline.
SECOND: Dr. Jenkins
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Dr. Krishna questioned whether the physician involved in this case was referred to the Board for violation of his Board Order. Ms. Wynn informed the Board that the physician entered into a Consent Agreement for Surrender of his medical license in August 2011.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
26.	MD-11-1031A	SANDRA L. LEVITT, M.D.	23910	Issue an Advisory Letter for inadequate supervision of a PA. This matter does not rise to the level of discipline.
27.	MD-11-0927A	JEFFREY B. LOOMER, M.D.	20557	Rescind the Advisory Letter and return the case for further investigation for consideration of CME.

Dr. Loomer spoke during the call to the public. Dr. Thrift stated he believed that Dr. Loomer tried to satisfy or follow the appropriate guidelines for narcotic prescriptions, but was foiled by a patient that may or may not have been drug seeking and by difficulties with the patients' insurance company. Dr. Schneider expressed concern regarding the excessive prescribing with the potential for diversion. Carol Peairs, M.D., Medical Consultant, stated that Dr. Loomer never examined the patient's lumbar spine, failed to obtain imaging, did not take a multidisciplinary approach towards the treatment plan, and failed to query the Pharmacy Board's prescription database prior to prescribing. Dr. Khera stated that an incredible amount of narcotics were prescribed by Dr. Loomer with significant potential for abuse. Dr. Khera suggested that Dr. Loomer undergo CME in managing pain patients in addition to the issuance of an Advisory Letter.

MOTION: Dr. Schneider moved to issue an Advisory Letter for excessive use of narcotics for pain management and for inadequate monitoring of a patient taking large quantities of narcotics. This matter does not rise to the level of discipline.
SECOND: Ms. Ibáñez

Dr. Peairs suggested that the Board modify the Advisory Letter language to include that the prescriptions were written in the absence of a physical exam, diagnostic studies, consideration of a multidisciplinary approach, random drug testing, and query of the pharmacy database. Dr. Schneider stated that the main issue in this case was the excessive use of narcotics for pain management. Dr. Peairs stated that what may be excessive in one context may be inadequate in another. Dr. Krishna recommended adding "and examining" to the language of the Advisory Letter after "inadequate monitoring." Dr. Schneider and Ms. Ibáñez agreed to amend the motion.

AMENDED MOTION: Dr. Schneider moved to issue an Advisory Letter for excessive use of narcotics for pain management and for inadequate monitoring and examining of a patient taking large quantities of narcotics. This matter does not rise to the level of discipline.
SECOND: Ms. Ibáñez
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

MOTION: Dr. Krishna moved to issue a Non-disciplinary CME Order requiring the physician to obtain 20 hours of pre-approved Category I CME in pain management within six months.

Ms. Boucek advised the Board to enter into Executive Session for legal advice.

MOTION: Dr. Krishna moved to enter into Executive Session to receive legal advice.
SECOND: Dr. Jenkins
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Board entered into Executive Session at 2:18 p.m.
The Board returned to Open Session at 2:25 p.m.
No deliberations or discussions were made during Executive Session.

Dr. Krishna withdrew his previous motion for a CME Order.

MOTION: Dr. Krishna moved to reopen this case.
SECOND: Ms. Proulx
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: Dr. Krishna moved to rescind the Advisory Letter and return the case for further investigation for consideration of CME.
SECOND: Ms. Proulx
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

REVIEW OF EXECUTIVE DIRECTOR (ED) DISMISSALS
MOTION: Dr. Krishna moved to uphold the dismissal in item numbers 1-5.
SECOND: Dr. Khera
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-1193A	MICHAEL P. HABIB, M.D.	15246	Uphold the dismissal.
2.	MD-11-0740B	JOHN J. KRESL, M.D.	25703	Uphold the dismissal.

JL and RM spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-11-1358A	DANIEL J. BECK, M.D.	31142	Uphold the dismissal.

Dr. Thrift stated that he knows Dr. Beck, but that it would not affect his ability to adjudicate the case. BD and KA spoke during the call to the public. Dr. Beck also spoke during the call to the public with attorney John Drakowski.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-11-1266A	DOMINGO CHELEUITTE, M.D.	31374	Uphold the dismissal.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-11-1532A	CHRISTOPHER S. COURTNEY, M.D.	32102	Uphold the dismissal.

PV spoke during the call to the public.

OTHER BUSINESS
MOTION: Dr. Schneider moved to accept the proposed Consent Agreements in Other Business item numbers 1-3.
SECOND: Dr. Krishna
ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members abstained from the vote: Ms. Ibáñez and Dr. Magalnick.
VOTE: 8-yay, 0-nay, 2-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0578A	ROBERT PAGE, M.D.	7689	Accept the proposed Consent Agreement for a Decree of Censure.
2.	MD-11-1451A	MARCO A. SOBRINO, M.D.	40371	Accept the proposed Consent Agreement for a Decree of Censure.
3.	MD-11-1136A	JAMES W. EISENBERG, M.D.	40512	Accept the proposed Consent Agreement for a Letter of Reprimand.
4.	MD-11-0779A	CHRISTOPHER S. HINSON, M.D.	44464	Deny the appeal of the ED's referral to Formal Hearing.

Dr. Hinson and attorney Steve Myers spoke during the call to the public. Dr. Krishna found it egregious that Dr. Hinson was not forthcoming on his license application, and spoke in favor of the referral to Formal Hearing.

MOTION: Dr. Krishna moved to deny the appeal of the ED's referral to Formal Hearing.
SECOND: Ms. Ibáñez

Dr. Gillard noted that Dr. Hinson was offered a Consent Agreement to surrender his license in lieu of the matter being referred to Formal Hearing for revocation.

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-11-1508A	THOMAS P. WENTLAND, M.D.	N/A	Deny the license application.

Anita Shepherd, Investigations Assistant Manager, summarized that Dr. Wentland answered affirmatively on his license application that he had surrendered his DEA license and was the subject of disciplinary action with regard to his Illinois medical license and controlled substance registration. Ms. Shepherd stated that Dr. Wentland failed to disclose that his New York medical license was subsequently revoked based on the Illinois Board's action and his failure to appear for the hearing. Dr. Lee noted inconsistencies in Dr. Wentland's answers during the investigation.

MOTION: Dr. Lee moved to deny the license application.
SECOND: Dr. Krishna

Dr. Lee observed that the physician claimed that he did not receive notice from the New York Board that his license had been revoked. However, Dr. Lee noted that the New York Board indicated that Dr. Wentland was noticed and that he provided a response. Dr. Krishna noted that revocation of a license under another jurisdiction in and of itself is grounds for denying a license application in the State of Arizona.

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-11-1329A	KAREN F. ARCOTTA, M.D.	15646	Accept the proposed Consent Agreement for Surrender of License.
7.	MD-11-1319A	LUKE CESARETTI, M.D.	21772	Accept the proposed Consent Agreement for a Letter of Reprimand.
8.	MD-11-1318A	WILLIAM L. BOREN, M.D.	12753	Accept the proposed Consent Agreement for a Letter of Reprimand.

MOTION: Dr. Schneider moved to accept the proposed Consent Agreement in Other Business item numbers 6-8.
SECOND: Ms. Ibáñez
ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

LEGAL MATTERS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-10-0988A MD-10-1392A MD-11-0006A	ARTHUR J. O'CONNOR, M.D.	6361	Deny the motion for rehearing or review.

Dr. O'Connor was present with attorney Dan Jantsch. Dr. Krishna stated that he knows Mr. Jantsch, but it would not affect his ability to adjudicate the case. Mr. Jantsch stated that the Board has a legal and affirmative obligation to afford due process to a physician who is at risk of license revocation or suspension. Mr. Jantsch stated there were many errors in the hearing process that included the denial of their request for the underlying materials from the Sante Center for Healing and that the Sante report was inappropriately admitted into evidence. Mr. Jantsch also stated that the legal analysis used to determine that patient JPP was not credible was not used in determining the credibility of the other patients, and that the evidence relied upon for revocation is insufficient. Mr. Jantsch requested that the Board substitute new findings and conclusions of law or grant a rehearing. Michael Sillyman, Outside Counsel for the Board, stated that the Board only collects the final report from the evaluating facilities, and that the physician and his counsel had the ability to subpoena the underlying materials directly from the facility. Mr. Sillyman explained that the report was admitted into evidence at the hearing to demonstrate the false or misleading statements made by the physician regarding the patients' allegations. Mr. Sillyman stated that the fact that the hearing officer found one witness not to be credible and found the other two to be credible is an indication that the hearing officer was considering the evidence as well as the testimony and demeanor of the witnesses.

Mr. Sillyman further stated that Dr. O'Connor received a fair hearing with multiple witnesses over a five day period. He stated that the facts and conclusions entered into by the hearing officer were justified by the evidence and not contrary to law, and that the penalty was not excessive and, therefore, a rehearing is not warranted. Mr. Jantsch stated that technically, they could have subpoenaed the records, but that an Arizona subpoena has no affect in Texas, and they would have had to jump through hoops to obtain the records when the Board could have simply made a phone call on their behalf to assist in giving the physician a fair hearing. Mr. Jantsch stated that the ALJ did not address the credibility of the patients in the recommended findings, and that the Sante report was used beyond the bounds of the limited purpose for which it had been admitted into evidence. Mr. Jantsch stated that license revocation and the hearing costs were an excessive penalty.

MOTION: Dr. Lee moved to enter into Executive Session to receive legal advice.
SECOND: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Board entered into Executive Session at 10:18 a.m.
The Board returned to Open Session at 10:25 a.m.
No deliberations or discussions were made during Executive Session.

Dr. Gillard noted that this was a complicated case and stated that there is considerable evidence to allow for a rehearing because cases that were previously dismissed were used to support accusations that were ultimately not found to be credible.

MOTION: Dr. Gillard moved to grant the request for rehearing or review.
SECOND: Dr. Khera

Dr. Schneider spoke against the motion and noted that the hearing was conducted over several days with multiple witnesses heard by the ALJ with the recommended decision to revoke the license. She stated that the fact that the physician is not happy with the outcome is not grounds for rehearing or review. Drs. Krishna and Lee also spoke against granting a rehearing or review. Dr. Lee noted that the concerns raised by the physician and his attorney were considered at the time that the Board voted to revoke the license. Christopher Munns, Assistant Attorney General, Solicitor General's Office, clarified for the Board that statute authorizes the Board to assess the hearing costs for a physician who has been found to have violated statute.

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

MOTION: Dr. Schneider moved to deny the motion for rehearing or review.
SECOND: Ms. Ibáñez
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0573A	MELVYN V. MAHON, M.D.	42434	Deny the motion to lift the Practice Restrictions.

Drs. Lee and Thrift stated that they know Dr. Mahon's expert witness, but that it would not affect their ability to adjudicate the case. Dr. Mahon was not present during the Board's consideration of the motion to lift the Practice Restrictions. Attorney Bill Phillips was present on behalf of Dr. Mahon. Mr. Phillips explained that Dr. Mahon has not been practicing for eight months due to the Board's summary restriction. Mr. Phillips stated that Dr. Mahon attended the Physician Assessment and Clinical Education

(PACE) program and received a Clear Pass, which is the highest passing mark, and that PACE determined that Dr. Mahon is safe to practice interventional cardiology. Mr. Phillips requested that the Board grant the motion to lift the Practice Restrictions.

Anne Froedge, Assistant Attorney General, stated that although the PACE report came back positive, there are multiple serious patient cases that require adjudication. Ms. Froedge deferred to the Board in determining whether to lift the Practice Restrictions pending final adjudication of the case. Mr. Phillips stated that Dr. Mahon responded to the concerns identified in the five patient cases, and pointed out that the main issue involves indications for the invasive procedures. Mr. Phillips asked that the Board consider lifting the restrictions allowing Dr. Mahon to return to practice with any conditions the Board deems appropriate. Dr. Khera spoke against lifting the Practice Restrictions and expressed concern regarding the five patient cases involving interventional cardiology. Dr. Khera stated that serious concerns include the use of anticoagulants during interventional cardiology treatment. Board members noted that this matter is currently pending Formal Hearing.

MOTION: Dr. Schneider moved to deny the motion to lift the Practice Restrictions.
SECOND: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

FORMAL HEARING MATTERS – CONSIDERATION OF ADMINISTRATIVE LAW JUDGE (ALJ) RECOMMENDED DECISION

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-10-0805A MD-10-1036A	GABRIEL U. OGBONNAYA, M.D.	32142	Adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order, and approve the proposed Order filed by the State.

Dr. Ogbonnaya was present with attorney Holly Gieszl. Ms. Froedge stated that this case involved inappropriate touching of multiple female patients, and that the hearing was conducted over a six day period with numerous exhibits and witnesses. Ms. Froedge stated that the ALJ recommended license revocation, and that the State supports the recommendation with a few modifications to the Findings of Fact and Conclusions of Law. Ms. Froedge requested that the Board modify Finding of Fact #36 to reflect the correct date of June 7, 2010; Finding of Fact #37 by striking the first sentence; Finding of Fact #65 in its entirety should be modified as the quality of care allegations regarding this patient were withdrawn; and Finding of Fact #72 to correct the typographical error. Ms. Froedge also requested that the Board modify the Conclusion of Law #4 by striking that Dr. Ogbonnaya "voluntarily" agreed to be bound by the Order for Summary Suspension because it is not a voluntary agreement.

Ms. Gieszl stated that there was no analysis or review of the evidence by the ALJ. She stated that the recommended Order did not address the fact that the State had withdrawn its quality of care concerns regarding one of the patients, and that the recommended Order did not meet the Board's due process obligation. Ms. Gieszl stated that their expert forensic psychiatrist gave a report finding each complainant not to be credible. Ms. Gieszl requested that the Board rehear the case or return it for review by a different ALJ. Ms. Froedge stated that the recommended Findings are supported by substantial evidence, and that the findings support the conclusion. Ms. Froedge informed the Board that Dr. Ogbonnaya's expert forensic psychiatrist was involved in the case later into the proceedings and that he did not interview the witnesses or hear their testimonies at the hearing. Ms. Gieszl stated that Board staff testified at the hearing that the Board has never revoked a physician's license based on the standard of care violations involved in this case. Ms. Froedge stated that the quality of care allegations would not have prompted a request for revocation, but that the quality of care issues identified were incidental to the allegations that prompted the investigation.

MOTION: Dr. Krishna moved to adopt the ALJ's recommended Findings of Fact and Conclusions of Law as modified.
SECOND: Ms. Proulx
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

MOTION: Dr. Schneider moved to accept the ALJ's recommended Order for Revocation and assessment of Formal Hearing costs, to be paid within thirty days.
SECOND: Ms. Ibáñez
ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Mr. Munns instructed the Board to vote on the State's proposed Board Order arising from the ALJ's recommended decision.

MOTION: Dr. Krishna moved to approve the proposed Order filed by the State as the final Board Order in this case.
SECOND: Dr. Lee
ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0390A	RICHARD G. BOTTIGLIONE, M.D.	14927	Adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order, and approve the proposed Order filed by the State.

Dr. Bottiglione was present with attorney Charles Buri. Ms. Froedge summarized that the ALJ did not find any violation of unprofessional conduct regarding the quality of care allegation, despite testimony of the State's expert who felt strongly that the standard of care was not met in this case. She stated that medical recordkeeping issues remained, and the ALJ recommended a Letter of Reprimand with the requirement to obtain CME in recordkeeping. Ms. Froedge informed the Board that pursuant to a Board Order from 2000, Dr. Bottiglione underwent medical recordkeeping CME. She asked that the Board adopt and modify the ALJ's recommended Order by eliminating the CME requirement. Mr. Buri stated that he does not believe that CME in recordkeeping is required, and that a Letter of Reprimand is not appropriate given the findings of fact. Mr. Buri noted that there are two findings that reveal inadequacies in Dr. Bottiglione's operative report which he believed do not rise to the level of discipline. Ms. Froedge stated that this matter rises to the level of discipline as Dr. Bottiglione's prior Board history is significant and the recordkeeping issue in this case is particularly concerning because it misrepresents what occurred during the patient's surgery.

MOTION: Dr. Jenkins moved to adopt the ALJ's recommended Findings of Fact and Conclusions of Law.
SECOND: Dr. Krishna

Dr. Lee observed that a subsequent provider reviewing the patient's record would not be able to determine that the patient had a positive finding of squamous cell carcinoma based on Dr. Bottiglione's operative report.

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

MOTION: Dr. Schneider moved to adopt and modify the ALJ's recommended Order for a Letter of Reprimand to exclude the requirement for CME.
SECOND: Dr. Krishna

Dr. Schneider noted that Dr. Bottiglione has satisfied the CME requirement recommended by the ALJ pursuant to a prior Board Order.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

MOTION: Dr. Krishna moved to approve the proposed Order filed by the State as the final Board Order in this case.
SECOND: Ms. Proulx
ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-11-0001A	DARRELL J. JESSOP, M.D.	23441	Adopt and modify the ALJ's recommended Findings of Fact and Conclusions of Law, and issue a Letter of Reprimand and Five Year Probation with Practice Restriction. The physician shall be restricted from prescribing controlled substances for a period of five years and shall within six months complete 20 hours of Board approved CME course in pediatric emergencies. The CME shall be in addition to the CME required for license renewal. This action is satisfactory in monitoring the physician and protecting the public and the revocation was excessive. The Practice Restriction shall be monitored by Board staff. The physician shall pay Formal Hearing costs within 90 days from the effective date of the Board's Order.

Dr. Jane Orient spoke during the call to the public on behalf of Dr. Jessop and regarding the December 14, 2011 Regular Session Meeting Minutes. Dr. David Ruben, Dr. Andrea Russell, and Mr. Steve Nash also spoke during the call to the public on behalf of Dr. Jessop. Mr. Sillyman stated that in April 2010, Dr. Jessop entered into a Consent Agreement which involved violations of unprofessional conduct for prescribing. The Consent Agreement restricted Dr. Jessop from prescribing, administering, or dispensing any controlled substances for a period of three years. The Order allowed Dr. Jessop to prescribe, administer, or dispense controlled substances only in life threatening or emergent situations. The case was forwarded to the Office of Administrative Hearings and a hearing was conducted and the ALJ concluded that Dr. Jessop had committed unprofessional conduct by prescribing Lomotil in violation of his April 2010 Consent Agreement, by prescribing two concurrent forms of Promethazine to a patient, by prescribing Lomotil to six pediatric patients who did not exhibit signs of dehydration, and by making

a false statement regarding reporting of a fraudulent prescription. Mr. Sillyman noted that Dr. Jessop alleged the hearing was flawed by not permitting Dr. Russell to testify on the meaning of the Consent Agreement. Mr. Sillyman stated that Dr. Russell's testimony was irrelevant, and that Dr. Jessop had every opportunity to present relevant testimony and evidence. Mr. Sillyman stated that the ALJ denied Dr. Jessop's request to subpoena the State's attorney to testify as of the meaning of the Consent Agreement because her testimony was irrelevant as the Agreement was that of the Board and not the attorney. Mr. Sillyman requested that the Board adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order.

Dr. Jessop noted that the information that Mr. Sillyman addressed was contained in his petition for rehearing or review he submitted that Board staff informed him they were unable to accept at this time. Dr. Jessop stated that when he entered into the Consent Agreement, he did not know that he would be forced to surrender his DEA registration. Dr. Jessop stated that he has been unemployed for one year, has been forced to file for bankruptcy, has lost his home, and almost his family. He also stated that during the last six months, he has been able to work by doing insurance physicals. He stated that he represented himself during the hearing and that he will not be able to pay the hearing costs. He implored the Board not to revoke his license and stated that he never openly sought to defy a Consent Agreement, and that he is only guilty of misinterpreting or misunderstanding the Board's Order. Dr. Jessop stated that in all previous discussions, the terms "prescribe, dispense, and administer" were used interchangeably. He stated that he prescribed the Lomotil in an urgent care setting as he had done during his training in Canada. Dr. Jessop stated that during the hearing, he was not allowed to call the Assistant Attorney General who had been responsible for drafting the previous Consent Agreement as a witness. Dr. Jessop stated that during the pre-hearing conference when the ALJ and counsel discussed issues prior to the hearing, he was not told that witnesses who were not MDs would not be able to testify, and that it was during the hearing that the Board's counsel and the ALJ stated that Dr. Russell could not testify, which completely altered his defense strategy and. Dr. Jessop stated that the presence of the newly assigned ALJ placed an inordinate emphasis to present his case as rapidly as possible and stated that he was cross-examined prior to giving his testimony. Dr. Jessop stated that the ALJ erroneously came to the conclusion that Promethazine is a controlled substance, and that he feels this casts doubt on the ALJ's ability to provide a truly informed decision in this case. Dr. Jessop stated that a number of references were presented at the hearing to show that Lomotil is commonly prescribed to pediatric patients, but it was overlooked or disregarded by the ALJ. Dr. Jessop further stated that he did not lie to the Board; he explained that he never said that he personally notified law enforcement personnel regarding the fraudulent prescription. Dr. Jessop further stated that he has paid for his transgressions and that he is not a threat to the health and safety of the public and asked that the Board not deprive him unnecessarily of his livelihood and profession.

Mr. Sillyman proposed that the Board make the following modifications to the ALJ's recommended Findings of Fact:

1. Page 1, line 29: June 18, 2008 changed to **June 16, 2008**;
2. Page 1, below line 30: "30 short-acting opioids" changed to "30 short-acting opioids **per patient**";
3. Page 2, lines 7 and 8: "Respondent admitted" changed to "Respondent admitted **to the entry of Conclusions of Law that concluded**";
4. Page 2, line 16: eliminate the word "**numerous**" after the word "Prescribing";
5. Page 2, line 17: change the spelling of Baciofen to Bac**l**ofen;
6. Page 2, line 20: change 80 Vicodin to **60** Vicodin;
7. Page 2, footnote 2: change "of the public" to "**or** the public";
8. Page 3, line 11: change "section(c)" to "section **2.c**";
9. Page 3, line 24: change "obtained a pharmacy survey" to "**conducted** a pharmacy survey";
10. Page 4, line 14: change "Respondent on cross-examination" to "**Respondent.**";
11. Page 4, line 24 and 25: change "testified to meaning in the medical profession" to "testified **as to the** meaning **of prescribing and administering** in the medical profession";
12. Page 5, footnotes 9 and 10: eliminate page references in Respondent's Exhibit 11;
13. Page 6, line 24: change spelling of "diphenozylate" to "diphenoxylate";
14. Page 7, line 19: change "that noted none of the patients exhibited" to "**and none** of the patients exhibited";
15. Page 7, footnote 15: change the quotes for Exhibits 21, 23, and 25 from "Active, attentive and in no acute distress: to "**The patient is a**ctive attentive and in no acute distress."; and eliminate the final two references to exhibits 29 and 31 as superfluous.
16. Page 8, line 11: change "Update.com" to "Up**to**date.com";
17. Page 10, line 21: change "to the pediatric patients" to "to **his** pediatric patients";
18. Page 10, footnote 26: change reference to "Respondent's Ex. 12" to "Respondent's Ex. **20**" and change page number "107" to "**2**";
19. Page 11, lines 5 and 6: correct quote from "wait two hours until the patient is dead" to "**and let them die two hours later**.";
20. Page 11, line 10: correct spelling of "Immodium" to "**Imodium**";
21. Page 15, line 2: change "to give effect of every part" to "to give effect **to** every part";
22. Page 15, line 5: change the word "intent" to "**intention**";
23. Page 15, line 7 and footnote 44: delete reference to footnote 44 and delete footnote 44;
24. Page 16, line1: change date from March 30, 2010 to March 30, **2011**;
25. Page 17, footnote 49: change citation from "Laws 1992, Ch. 316, § 10" to "**A.R.S. § 32-1403.A.**";
26. Footnotes 6, 7, 11, 13, 14-24, 28-34: change all references to Board Exhibit pages to "**AMB 000**".

Dr. Gillard stated that in review of the record and the hearing transcripts, he found that this matter does not rise to the level of license revocation. Dr. Gillard stated that there was a problem regarding whether Promethazine is a controlled substance. He stated that you could if you considered antibiotics a controlled substance, but stated that Promethazine is not an abusable drug. Dr. Gillard stated that possibly, a physician could prescribe too much; however, he stated that there is a large margin of safety. He stated that he cannot see where, since Promethazine is not scheduled by the DEA, where it would be a violation of prescribing a controlled substance. Dr. Gillard stated that Lomotil is a schedule V drug; however, there is almost no abuse and that it is used quite commonly, and stated that you could argue whether or not to prescribe to pediatric patients as he does not, but that it is not a contraindication. Dr. Gillard stated that sources do not advise prescribing in ages under two, but that there is no reason not to if you follow the dosing. Dr. Gillard stated that someone other than Dr. Jessop had approved the refill of the Hydrocodone. He noted that nowhere in the testimony was Respondent present at the time someone was called to okay the refill.

Dr. Thrift stated that he had difficulty with the ALJ's recommendation containing such an obvious error in classifying Promethazine as a scheduled drug. Dr. Thrift was concerned with the document stating that Dr. Jessop violated his Consent Agreement by prescribing a controlled substance, Promethazine. He stated that in something as serious as a revocation, moving forward on a faulty basis is difficult. Dr. Thrift noted that the Board's consultant testified that Dr. Jessop did have other alternatives rather than prescribing a scheduled drug. Ms. Ibanez asked the Board for clarification whether Promethazine is a controlled substance. Dr. Thrift stated that it is clear what a controlled substance is and that controlled substances are defined and there are no questions. He stated there is no argument as to what is or is not a controlled substance, and that Promethazine is not and that it is an obvious error. Dr. Lee stated that the Board can modify, amend, or reject any or all of the findings of the ALJ; however, the Board must have a reason to do so and stated that the reasons being proposed are legitimate. Mr. Munns stated the reason must also be included in the record regarding the findings of fact, and that their reason must include the factual basis. Mr. Sillyman stated that a Board document made a reference to Promethazine that may have been misinterpreted. Dr. Lee noted that the issue surrounding the Promethazine involved the issuance of two drugs with Promethazine to the patient at the same time, which may have resulted in significant sedation.

Dr. Jessop stated that he realizes Lomotil is a scheduled drug, but that he was trying to avoid an emergent situation. He stated that a child with indications of ongoing infection, diarrhetic, afebrile and vomiting that they treat empirically, and he stated that he has no idea how well a child is going to do 4-8 hours after they leave the clinic. He agreed that he could have used something alternatively, but chose appropriately to use it in this case. Mr. Munns stated that since no one entered the controlled substance schedules into the record, the parties could stipulate that Phenergan is not a controlled substance when they amend Findings of Fact #7. Mr. Munns stated that if the Board finds Finding of Fact #7 factually incorrect in that it referenced Promethazine as a controlled substance, the Board can amend the finding if the parties have no objection. Dr. Magalnick stated that in Dr. Jessop's original agreement, the issue seemed to be with drugs that have significant areas for abuse. He further stated that as a pediatrician, Lomotil is not a drug that he believes has the issue of abuse and stated that Lomotil does not equate to controlled substances involved in the previous Consent Agreement. Dr. Lee expressed concern regarding the physician's understanding of the boundaries outlined in the Agreement, and how he demonstrated his willingness to cross the boundaries, intentionally or otherwise. Dr. Lee stated that the Board has stated that Phenergan is not a controlled substance, but that they need to state that the Lomotil is a scheduled drug in addition to the narcotic that clearly was a controlled substance. Dr. Lee stated that this pattern bothers him significantly. Dr. Jenkins stated that she has a hard time revoking a physician's license based on a factual error and thinks the Board needs to use a little common sense. Dr. Jenkins stated that by previously restricting Dr. Jessop from prescribing controlled substances, the Board was trying to protect patients from abuse and that if he had written prescriptions for Percocet she would not think twice about the recommendation. However, Dr. Jenkins expressed having a difficult time with this error being the reason for the physician to lose his livelihood. Dr. Schneider noted that there is concern that Dr. Jessop does not see the Board as a body that can regulate him and that to her is what the ALJ is stating. Dr. Khera spoke against revoking the license for this particular physician based on the evidence.

MOTION: Dr. Gillard moved to deny the ALJ's recommendation for license revocation.
There was no seconder to the motion; therefore, the motion failed.

Dr. Krishna asked whether the Board could adopt the Findings of Fact, Conclusion of Law but not accept the recommended Board Order for revocation. Mr. Munns stated that it would mean that they were adopting the statement that Promethazine is a controlled substance. Dr. Lee requested that the Findings of Fact and Conclusions of Law then be taken separately.

MOTION: Dr. Jenkins moved to modify the ALJ's recommended Findings of Fact.
SECOND: Ms. Ibáñez
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Dr. Jenkins proposed striking the reference of Promethazine as a controlled substance from page 3, paragraph 7, line 22; and page 6, paragraph 20. Mr. Munns advised the Board to have the parties stipulate that Promethazine is not a scheduled drug prior to modifying the Findings of Fact. Mr. Sillyman and Dr. Jessop stipulated that Promethazine is not a controlled substance.

MOTION: Dr. Jenkins moved to strike Promethazine from page 3, paragraph 7, line 22.
SECOND: Dr. Krishna

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

Mr. Munns pointed out that page 6, paragraph 20 referenced that Promethazine was prescribed in violation of the Consent Agreement prohibiting the physician from prescribing controlled substances. Dr. Khera recommended striking the first line in the paragraph. Mr. Munns stated it is clear from the record that Promethazine is not a controlled substance.

MOTION: Dr. Khera moved to strike the first line of paragraph 20 on page 6.
SECOND: Dr. Thrift
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Dr. Gillard noted that on page 11, line 38 it states that Monica had okayed the refill prescription, but that he does not see anywhere that Dr. Jessop was on duty or aware of the call, or how it was determined that is a violation. Mr. Sillyman stated that the violation had nothing to do with Monica, but had to do with Dr. Jessop reporting to the Board that he had disclosed to authorities when he had not. Dr. Jessop stated that he learned about the situation with this patient and how she managed to procure the medication six months after the fact, and that he was no longer working at the urgent care facility. He stated that he went to the pharmacy to obtain the records himself, spoke to the Medical Director at the urgent care, but did not call police as he did not know he was required to do so. Dr. Jessop stated he wasn't aware of any statutes or regulations, and believes there are not any. Dr. Lee stated he does not wish to retry the case, but try to make a determination and make modifications as necessary.

MOTION: Dr. Jenkins moved to adopt the remainder of the ALJ's recommended Findings of Fact as modified by the State.
SECOND: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

MOTION: Dr. Jenkins moved to modify the ALJ's recommended Conclusions of Law.
SECOND: Dr. Thrift
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Dr. Jenkins expressed her concern and stated she does not agree that the Board is unable to regulate the physician and that he is a threat to the public. Dr. Jenkins stated that he believes the Board has influenced his life already, and that she does not have a sense that he flaunts the Board's authority and does whatever he pleases. Dr. Jenkins suggested removing the conclusion that states that Dr. Jessop cannot be regulated at this time.

MOTION: Dr. Jenkins moved to strike page 15, paragraph 11.
SECOND: Dr. Krishna

Dr. Thrift spoke in favor of the motion and believes that it captured the essence of the Conclusions of Law. Dr. Lee spoke against the motion and stated that historically it is clear that there had been issues. Dr. Lee stated that he is hopeful that Dr. Jessop has learned his lesson in this sense, but has strong doubts. Ms. Proulx was in agreement with Dr. Lee.

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

MOTION: Dr. Krishna moved to adopt the remainder of the ALJ's recommended Conclusions of Law.
SECOND: Ms. Ibáñez

Dr. Khera referenced #8, discussing the Promethazine. Dr. Lee stated this was two different matters and that even if you accept that Promethazine is not a controlled substance, the question was whether it was appropriate to prescribe two forms to the patient.

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

MOTION: Dr. Jenkins moved to reject the ALJ's recommended Order.
SECOND: Dr. Gillard

Dr. Thrift asked if the Board were to reject the Order, could they issue another Order. Dr. Lee stated they are only considering the ALJ's recommendation, and that the Board issues the Order.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.

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

Dr. Krishna spoke against dismissal stating that although there was no patient harm, there was potential harm. He stated that the Board could, at the least, issue an Advisory Letter expressing the Board's concerns. Mr. Munns informed the Board that because violations were adopted, an Advisory Letter is not an option. Dr. Lee spoke in favor of issuing a Decree of Censure as this is not a first time issue, the matter rises to the level of discipline, and for the acts that are still potentially dangerous. Dr. Schneider questioned whether the Practice Restriction will remain in effect. Mr. Munns informed the Board that the Practice Restriction remains effective as it was issued under a different case. Ms. Wynn reported that Dr. Jessop's Practice Restriction will terminate in April 2013 by operation of law. Dr. Krishna stated that he did not believe the case rises to the level of a Decree of Censure, and stated that he would speak in favor of a Letter of Reprimand. Dr. Thrift suggested requiring Dr. Jessop to obtain CME in pediatric emergencies. Dr. Jenkins stated she believed a Letter of Reprimand and Probation with a Practice Restriction is sufficient for the public protection, and that revocation of the physician's license in this case is excessive.

MOTION: Dr. Jenkins moved to issue a Letter of Reprimand, Five Year Probation and Practice Restriction. Shall be restricted from prescribing controlled substances for a period of five years. Shall within six months complete 20 hours of Board approved CME course in pediatric emergencies. The CME shall be in addition to the CME required for license renewal. This action is satisfactory in monitoring the physician and protecting the public and the revocation was excessive. Practice Restriction shall be monitored by Board staff. Physician shall pay Formal Hearing costs within 90 days from the effective date of the Board's Order.
SECOND: Ms. Ibáñez

Dr. Gillard proposed including the language "DEA scheduled medication" under the Practice Restriction in an effort to be more specific regarding what the physician is prohibited from prescribing. Dr. Lee spoke against describing in the Order what is considered to be a controlled substance, and stated that it is the physician's responsibility to know whether he is prescribing a controlled substance medication in violation of his Board Order. Ms. Wynn proposed that the Board consider assessing the Formal Hearing costs. The Board members agreed, and Dr. Lee recommended requiring that the costs be paid within ninety days of the effective date of the Order. Dr. Jessop informed the Board that he could not afford the Formal Hearing costs. Dr. Jenkins and Ms. Ibáñez agreed.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

FORMAL INTERVIEWS

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
1.	This matter was moved to Other Business #8.			
2.	This matter was moved to Other Business #7.			

The meeting adjourned at 3:21 p.m.

Lisa S. Wynn, Executive Director