



Arizona Medical Board

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DRAFT MINUTES FOR BOARD OFFSITE PLANNING MEETING

Held on February 2, 2012

at Gainey Suites Hotel, 7300 Gainey Suites Drive, Scottsdale, AZ 85258

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

Jodi 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

The meeting was called to order at 9:00 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

There were no individuals who spoke during the call to the public.

1. USE OF PRESCRIPTION MONITORING PROGRAM BY ER PHYSICIANS

Lisa Wynn, Executive Director, informed the Board that the Pharmacy Board's Controlled Substance Prescription Monitoring Program (CSPMP) has been in place for just over three years and that the Board's primary goal is to work with the Pharmacy Board, Governor's Office, and other prescribing boards to increase the accessibility of it and provide training for licensees. She stated that in talking with pharmacists and physicians, it is still cumbersome to access the program. Ms. Wynn stated that physicians that hold a DEA registration are required to register with the program, and that there are no other requirements for accessing the database. Jennifer Boucek, Assistant Attorney General, Legal Advisor, informed the Board that physicians are required to access the CSPMP if they are certifying for medical marijuana. Ms. Ibáñez questioned whether pharmacies are required to enter prescription information into the database. Ms. Wynn stated that they are at the time that a prescription is filled.

Ms. Wynn explained to the Board that there is an online training that the Pharmacy Board has developed, and that the Board's goal is to link it to the different board websites and eliminate some of the barriers. Dr. Jenkins questioned whether there has to be an established physician-patient relationship prior to accessing the database for that patient. Ms. Wynn stated that if the database is utilized for anything other than the purpose for which it was intended, it is a class six felony. Ms. Wynn reported that there is currently no pending legislation, and that the Agency has been coordinating with the Arizona Substance Abuse Partnership and the Health Policy Advisor of the Governor's Office regarding the training and further education. Dr. Schneider suggested that the Board reach out to emergency room physicians and residents to encourage use of the program. Dr. Jenkins proposed that the Board members be provided with powerpoint presentations to provide to their staffs.

Dr. Khera recommended that when a pharmacy reports a physician, that the physician be called and told that they are falling out of line with other physicians in the community. Dr. Schneider stated that it is inappropriate to target a particular physician without a complaint being filed. Dr. Thrift stated that any physician on the Board who has not already registered for the program should do so to gain insight on some barriers that are involved in signing up for it.

2. TRACKING OF SURGICAL CASES WITH KNOWN COMPLICATIONS

William Wolf, M.D., Chief Medical Consultant, spoke about surgeries with known complications. Dr. Wolf stated that in reviewing surgical cases with known complications and the case has been dismissed, legally it is inappropriate for Board staff to go back and review those dismissed cases. Previously, because the Advisory Letters were posted on the Board's website, there was

concern that the Advisory Letters might somehow become appealed successfully, and Advisory Letters at this time are not an appealable agency action. In the past there had been a few attempts to appeal an Advisory Letter, and it was believed that it would compromise the utility of Advisory Letters if they became appealable actions. Legal has previously advised the Board to make sure that there is a finding of unprofessional of conduct prior to issuing an Advisory Letter. However, now that they are not posted to the website, it seems less likely that a physician would successfully mount an attempt to appeal an Advisory Letter. Dr. Wolf stated that if we had cases where known complications occurred, the Board could consider recommending issuing an Advisory Letter without a finding of unprofessional conduct. Ms. Boucek stated that this could occur in a case when SIRC recommends an Advisory Letter and there is a known complication, but recommend issuing the Advisory Letter for tracking purposes. Dr. Schneider asked that when unprofessional conduct was voted down, essentially in the past they have dismissed the case. Ms. Boucek stated this would be used in cases in which SIRC recommended an Advisory Letter for tracking purposes only and that this would be used on a very limited basis to determine if this is a reoccurrence by the physician. Ms. Boucek stated that the rule states “does not rise to the level of discipline or a technical violation.” Ms. Boucek stated that this would not be used when SIRC is recommending discipline.

Dr. Schneider asked if during the interview, if the Board could state that it does not rise to unprofessional conduct and issue an Advisory Letter in one statement. Ms. Boucek stated they could say they don't believe there is unprofessional conduct, but because of the nature of the conduct it should be tracked and an Advisory Letter issued. Dr. Lee clarified that they could still vote separately of no finding of unprofessional conduct and issue an Advisory Letter, and recommended taking the vote separately during the interviews. Ms. Boucek stated that the only issue may be that other members may be reluctant to vote down a finding of unprofessional conduct thinking that the case would be dismissed. Ms. Boucek stated it could be mentioned and there is no harm in saying that they would be recommending an Advisory Letter and that is why they do not believe it rises to a finding of unprofessional conduct. Anne Froedge, Assistant Attorney General, listed the three different rationale as cited in statute that state “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; the violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action; and 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.” Dr. Schneider felt it would be helpful to issue Advisory Letters for tracking purposes so that they can look at past Advisory Letters when considering actions. The Board discussed physicians' appeals of Advisory Letters and Ms. Boucek stated that a recent Superior Court memo opinion upheld that Advisory Letters are non-appealable agency actions. The Board discussed whether this could be accomplished with one vote and Ms. Boucek agreed that the Board could make one motion because it is a non-disciplinary action.

Dr. Wolf stated that it is believed that when Advisory Letters were posted on the Board's website, it could be argued that it compromised the physician's livelihood. Dr. Jenkins questioned the purpose of the Advisory Letters and Ms. Boucek stated that an Advisory Letter places a physician on notice that continuation of the violation will result in further action by the Board.

3. APPLICANTS WITH EXPIRED ARIZONA LICENSES

Ms. Wynn informed the Board of recent licensing issues regarding physicians who were previously licensed through endorsement and have allowed their Arizona license to expire and no longer hold an active license in any other state. Ms. Wynn requested that the Board review the proposed Agency Policy LIC-018 regarding reinstatement of applicants with expired licenses. The current statute speaks to what an initial license is and addresses licensure by endorsement where an applicant is eligible to obtain a license in Arizona if they are licensed in another state without having to pass the United States Medical Licensing Examination (USMLE). When a physician who had previously been licensed by endorsement allows their Arizona license to expire and they do not hold an active license in another state, they are no longer eligible for licensure by endorsement. Ms. Wynn stated that the proposed policy was drafted for the Board's review and that it treats the licensee as if they held an inactive license. According to Ms. Wynn, this would not be an issue if the licensee had requested inactive status. Dr. Krishna stated that if a physician re-entering practice demonstrates satisfactory evidence that the physician possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine and that if they adhere to that and have kept current on their CME, there is no reason why they could not be licensed. Dr. Magalnick noted in the past as Chair of the Department of Pediatrics, there had been an instance where a physician who was involved in academic medicine for twenty years wanted to come back and practice and that in these types of situations it is difficult to assess the issue of whether the physician has acceptable medical knowledge. Ms. Boucek stated that the Board needs a statute to address this issue as the only provision that we have currently states that the applicant can reapply pursuant to this chapter.

Ms. Boucek stated that in rule, alternatives which could be used for determining medical knowledge should be specified. Dr. Thrift asked how the Board would treat a physician who does not have adequate residency requirements here, but is licensed in another state and allowed that license to expire. Dr. Jenkins pointed out that this only speaks to an Arizona license. Ms. Wynn stated that there is already a procedure in place to review a physician's practice history when applying for licensure. Dr. Krishna stated that if a physician's license has been expired for over five years, a Physician Assessment and Clinical Education (PACE) evaluation could be a requirement for reapplying, and suggested that there be some term limit. Ms. Froedge stated that other state boards do not require testing if a license had been expired for less than three years. Ms. Froedge stated that a statute would be required to define a timeframe. Ms. Wynn summarized that the Policy addresses physicians who were initially licensed

in Arizona through endorsement and no longer hold an active license in any other state. She stated that she wanted the Board to be aware of the Agency Policy and requested their support of the Policy. She stated that they could introduce legislation as early as this session or possibly do an amendment, and in the interim use the Agency's Policy. Dr. Lee stated that at the FSMB level, he is on a subcommittee that is looking at the re-entry to practice and that the Board may want to follow up with them regarding reinstatement statutes in other states. Dr. Schneider asked if this required a formal vote of the Board. Ms. Wynn stated that Agency policies are approved internally and signed by the Executive Director. Ms. Wynn stated that Paul Parker as the new Licensing Manager has made amazing operational improvements and that they are now issuing licenses within fifteen days.

4. RECORDING OF BOARD MEETINGS

Ms. Wynn proposed that the Board begin recording the meetings as early as April 2012. Ms. Ibáñez pointed out that in the past, the Tucson boards and commissions kept minutes of their meetings without a recording, and she stated that the more elaborate the minutes became, the more they would be picked apart. Ms. Ibáñez stated that a legal action report is used now, which only records who was present and what action was taken and an audio of the meeting is maintained. Dr. Krishna spoke in favor of recording the board meetings and pointed out that the minutes are only a summary of the meeting. Ms. Wynn stated that by recording the meetings, the minutes will no longer include discussions, but would include the motion and the votes. Ms. Boucek stated that Executive Sessions will still be in written form and not recorded as these are confidential. Dr. Schneider questioned how the recordings will be made available for the public. Ms. Wynn stated that the recording would eventually be available on the Board's website, and that there is potential to live feed the meetings as well. Dr. Schneider commented that it is a good precedent for being transparent. Ms. Wynn stated that the recordings would not be edited as the discussion was done in public session. Dr. Thrift stated that if someone mentions a name in public session, since it is a public meeting, it was already heard in public. Dr. Jenkins stated that recording of the meetings will provide physicians with a feel of what happens at the Board if they are on notice to appear before the Board. Ms. Wynn stated that it would provide new Board members with the ability to view the Formal Interview process.

5. CONSIDERATION OF PENDING LEGISLATION

The Board discussed Bills that may impact or be of interest of the Board that are currently pending legislation. Stuart Goodman, Legislative Liaison, presented the following House and Senate Bills:

House Bill 2035: Medical Marijuana

The requirement of the Medical Board to submit an annual report to the Legislature regarding cases in which there is a finding of unprofessional conduct when medical marijuana is recommended for other than accepted therapeutic purposes. Mr. Goodman stated that this Bill will affect naturopathic physicians more than allopathic physicians.

House Bill 2070: License Eligibility; Authorized Presence

This Bill adds that any license issued by a government entity may serve as proof of citizenship.

House Bill 2277: International Medical School Graduates; Licensure

This Bill proposes the reduction in the required residency for foreign medical graduates from three years to two years. Dr. Krishna pointed out that allowing a foreign medical graduate to obtain a medical license after two years is a disservice to the physician because neighboring states require three years of postgraduate training and it would not allow reciprocity at all. Dr. Krishna pointed out that the FSMB has recommended uniformity of licensure, and stated that the minimum requirement should be three years of postgraduate training. Ms. Wynn stated that the alternative to the legislation would be to give the Board the ability and almost requirement to determine which foreign medical schools are equivalent to US medical schools. Dr. Krishna stated that the Board would not be able to determine the quality of foreign medical schools as there are more than 4200 across the globe. Mr. Goodman asked the Board if from concerns locally, if it is harming the physician who would become licensed under this standard by effectively landlocking the physician. Dr. Krishna stated that if they license a physician after two years, the physician would not be able to go anywhere else because they would not meet the requirements of other states. Dr. Krishna recommended continuing the three years as it currently stands and not to change the international medical graduates. Drs. Lee and Schneider agreed that the minimum requirement for Arizona licensure should be three years postgraduate training for foreign medical graduates. Dr. Lee commented that there may be a clinical issue related to the FSMB's recommendation for license uniformity. Dr. Khera pointed out that California only requires two years of residency for international medical graduates.

House Bill 2244: Professions and Occupations; Board Members

This Bill proposes limiting board membership of all regulatory agencies that no more than 25% of the board members may be from the profession regulated by the Board. Mr. Goodman informed the Board that this Bill will not be passed through this legislative session.

House Bill 2414: Hospital Internships; Residencies; Clinical Fellowships

This Bill adds programs approved by the American Society of Transplant Surgeons (ASTS) to the list of approved hospital internship, residency or clinical fellowship programs. Mr. Goodman informed the Board that a foreign educated and trained physician who currently holds an Arizona teaching license has applied for a medical license. He explained that the change will only apply to this particular physician and only as long as an ACGME approved program exists. Dr. Krishna noted that the

ACGME has not approved the ASTS program and stated he is concerned regarding foreign medical graduates obtaining proper training through an ACGME program. Dr. Lee suggested that the Board move forward with Mr. Goodman's recommendation to negotiate that the Bill apply to the one physician and that it be effective until such time that an ACGME program exists.

House Bill 2468: Regulations; Entry; Public Service; Limitations

This Bill prescribes administrative and enforcement processes. Mr. Goodman stated that an amendment has been proposed so that this Bill will not affect health regulatory agencies.

Senate Bill 1006: Medical Board; Continuation

Continues the Arizona Medical Board for ten years, until July 1, 2022. This Bill may include changing the burden of proof to clear and convincing, require the Board to record Board meetings, mandate how many years a medical consultant must have in practice before providing service as a medical consultant to the Board, include statute of limitations, and would eliminate anonymous complaints. Mr. Goodman noted that some of these changes the Agency has already implemented.

Senate Bill 1189: Health Professionals; State Regulation; Exception

Allows individuals licensed in other states to provide services at a free clinic for an unspecified period of time without registering with their respective regulatory board.

Senate Bill 1361: In Vitro Fertilization; Informed Consent

Attempts to establish a standard of care for assisted reproductive technology. Dr. Schneider noted that this Bill may interfere with processes of running a business of reproductive endocrinologists as it will add at least \$1,000 per cycle. Mr. Goodman stated that the Bill has not had a hearing, and that they are currently in the phase of joint stakeholder conversations.

Senate Bill 1365: Free Exercise of Religion; Contracts

Prohibits the denial, revocation or suspension of a professional license for refusing to provide a service that violates the licensee's sincerely held religious beliefs. Mr. Goodman explained that the Bill does not require a physician to find an alternative for the patient if he/she refuses to provide services. Dr. Khera questioned whether a provision could be added that requires a physician who refuses the service to at least find another practitioner to care for the patient. Anne Froedge, Assistant Attorney General, asked whether there was a definition of religious belief. Mr. Goodman stated that it would be a sincerely held belief, and that it does not have to be a recognized religious belief. Dr. Krishna requested that language be added to state that if the physician refuses service, they are to find another health care provider to continue the care of the patient. Dr. Schneider stated that this may open a door to a lot of faith based practices that are not in standing with the State. Dr. Lee suggested to better define "religious belief." Dr. Thrift was concerned that this may circumvent the Board's monitoring of public safety.

Additional Senate Bill introduced by Kimberly Yee

Mr. Goodman spoke about a Bill proposed by State Representative Kimberly Yee, which stemmed from a physician who claimed that in his specialty area, one or two competitors have been filing complaints to the Board as part of a marketing strategy. Mr. Goodman explained that the Bill will affectively establish that it is unprofessional conduct for a licensee to knowingly file a meritless complaint against another professional. Ms. Wynn expressed concern with preserving the integrity of the complaint process when attempting to determine the complaining doctor's intent. She stated that she was also concerned that this may make physicians think twice about filling a complaint against another physician. Pat McSorley, Investigations Manager, stated that when a case is opened, a simple analysis is used to determine whether or not the alleged conduct violates the Medical Practice Act. Dr. Lee suggested that the Board maintain its current complaint process, and to not endorse the potential new statute of unprofessional conduct.

6. TIPS ON CONDUCTING A FORMAL INTERVIEW, OVERVIEW OF THE FORMAL HEARING PROCESS, SUBSTANTIVE POLICY STATEMENTS/GUIDELINES AND CHANGES TO CALL TO THE PUBLIC FOR FORMAL HEARING MATTERS

Jennifer Boucek, Assistant Attorney General, Legal Advisor for the Board, provided a presentation for the Board regarding conducting Formal Interviews, overview of the Formal Hearing process, substantive policy statements/guidelines, and changes to the Call to the Public for Formal Hearing matters.

Ms. Boucek spoke about Formal Interviews, and stated it would be helpful if the Board at the beginning of the interview questioned the physician as to whether he/she has issues with the factual record developed by the Board or the facts in the medical consultant report. She stated that doing this on the record binds them to the facts. Dr. Schneider noted that the opening questioning by the presenting Board member has been long. Dr. Krishna proposed that the presenting Board member question the physician for the first twenty minutes of the interview and then allow other Board members to question the physician. Dr. Magalnick asked if there was any correlation as to which Board member gets what cases. Ms. Wynn stated that the Staff Investigational Review Committee (SIRC) addresses the case assignments for the medical cases, and stated that professional conduct cases are assigned to non-physician members. Dr. Schneider noted that at times, there is not a specialist on the Board for a particular case, and that these cases are difficult. Dr. Lee stated that without having that particular expertise in that field of medicine, the Board can gather from the medical consultant's report which questions to ask during the interview. Ms. Ibáñez stated that she did not want to be in lockstep of how they conduct interviews, and she stated that is why there are different specialties on the Board.

Dr. Wolf stated that SIRC tries to make sure that all of the potential violations are cited in the SIRC report. Dr. Schneider stated it is difficult when a physician states that they did things correctly, but did not record it in the patient's medical record. Dr. Wolf stated that SIRC in general will include a medical recordkeeping violation under those circumstances. Dr. Magalnick questioned Ms. Boucek regarding appealing a CME Order. Ms. Boucek stated that CME Orders are appealable because [they require the physician to do something he or she would otherwise not be required to do (ie, attend additional CME classes).] Dr. Lee stated that it is important to state in the record the Board's findings of fact. He noted that the Board has seen cases remanded on appeal because the transcript did not support the Board's conclusion. Dr. Jenkins noted that although a physician waives their due process right to confront the Board's expert witness by appearing for a Formal Interview, the physician has additional appeal rights if disciplinary action is issued. The Board discussed the issue of civil penalties, and were informed that staff entertains the idea of a civil penalty during the investigational review process. Ms. Wynn stated that there is not a lot of evidence that civil penalties change the quality of care concerns regarding a physician. Board members noted that restitution is different from Board fines as the restitution is paid to the patient while fines go to the State's General Fund.

Ms. Boucek explained to the Board that Chris Munns, Assistant Attorney General, Solicitor General's Office, sits in on contested cases to provide independent legal advice to the Board. She stated that the Board's counsel is available to provide legal advice on the non-contested cases. Dr. Magalnick questioned whether it is court decreed for the Board to assess Formal Hearing costs to the physician. Dr. Magalnick stated that it seemed to be punishment for the physician. Dr. Lee noted that the Board has the discretion to waive the cost if they wish to do so or place a time frame on when the costs are to be paid. Dr. Jenkins pointed out that the physician is notified at the onset that they may be required to pay for the hearing costs. Dr. Schneider noted that physicians have the option to settle the case prior to the Formal Hearing. Evangeline Webster, Support Services Manager, informed the Board that if the physician's license is revoked, the matter is referred to collections if the hearing costs are assessed. She stated that if the license is not revoked and the physician fails to pay the costs of the hearing, an investigation is initiated. Dr. Schneider recommended placing the issue of fees on a later agenda for Board discussion.

7. SECURITY AWARENESS

James Gentile, Chief Information Officer, discussed tips on keeping passwords confidential, the safety of Board members' laptops, the use of encrypted portable media, the appropriate destruction of Board meeting materials, and the secure log-in of the Board's 411 website.

8. FUTURE DIRECTION AND DISCUSSION ITEMS

The Board discussed FSMB attendance, reaching out to ERs regarding the prescription monitoring program, education/direction of new Board members, and discussion items to be placed on future agendas. Ms. Wynn informed the Board that the FSMB will be meeting on April 26, 2012 and that it is the FSMB's 100th year anniversary. Ms. Wynn stated that based on the Board's discussion regarding the use of the prescription monitoring program by ER physicians, the Agency will reach out to ERs regarding prescription monitoring. Board members discussed the mentoring of new Board members as proposed by Ms. Wynn in an effort to educate new Board members on the Board's processes. Ms. Wynn informed the Board that issues that arise during future Board meetings will be placed on the Board's next offsite meeting agenda as discussion items.

The meeting adjourned at 2:46 p.m.



Lisa S. Wynn, Executive Director