



## ARIZONA MEDICAL BOARD

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### DRAFT MINUTES FOR SUMMARY ACTION TELECONFERENCE MEETING

Held on Thursday, June 26, 2014

9535 E. Doubletree Ranch Road, Scottsdale, Arizona 85258

#### 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 E. 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 G. Paul, M.D.

Wanda J. Salter, R.N.

#### A. CALL TO ORDER

Dr. Khera called the meeting to order at 6:55 p.m.

#### B. ROLL CALL

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

#### ALSO PRESENT

C. Lloyd Vest, II, Executive Director, Marc Harris, Assistant Attorney General (AAG), Anne Froedge, AAG, Carol Peairs, M.D, Medical Consultant, Alicia Cauthon, Executive Director's Assistant, Amanda Schwabe, Board Coordinator, and Andrea Cisneros, SIRC Coordinator.

#### C. CALL TO THE PUBLIC

Patients MM, SG, and DM spoke during the call to the public on behalf of Dr. Osborne.

#### D. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SUMMARY ACTION

##### 1. MD-13-1108A AND MD-13-0386A, ROBERT C. OSBORNE, M.D., LIC. #9796

Dr. Farmer was recused from this matter. Dr. Osborne was present with Attorney Corey Larson. AAG Harris advised the Board that this matter was properly agendized.

Dr. Peairs stated that MD-13-1108A was initiated after the Board received a complaint from an insurance company. The complaint included information that identified Dr. Osborne as a high volume prescriber of narcotic medications and expressed concerns that he was placing his patients at risk. Dr. Peairs stated that several common themes were noted in the eight patient cases, including medical recordkeeping issues. Deviations from the standard of care that were identified included the physician's failure to incrementally titrate the opioid dosage to the lowest effective dose, the initiation of a potentially fatal opioid dose in an opioid naïve patient, concurrent prescribing of opioid and benzodiazepine, and failure to account for medical comorbidities. Additional deviations from the standard of care were noted that involved Methadone prescribing and psycho-stimulant prescribing. Dr. Peairs added that similar deviations from the standard of care were identified by a second medical consultant who reviewed the case. In case MD-13-0386A, a third medical consultant noted similar deviations from the standard of care in Dr. Osborne's care and treatment of two patients.

Mr. Larson referred the Board to correspondence submitted by James Steuhringer requesting a brief continuance of this matter until such time that he could be present and participate. Mr. Larson stated that Dr. Osborne has offered to close his practice until such a meeting could be scheduled, which he stated would alleviate any concern

by the Board regarding patient harm. Mr. Larson added that he believed summary action by the Board would deprive Dr. Osborne of due process by not allowing a reasonable hearing at a reasonable time.

AAG Froedge clarified that there has not been a denial of the physician's due process rights, and asked that the Board make a determination regarding the request for a continuance. She explained that the purpose of the Board convening to consider summary action is for the Board to determine whether the public health, safety, or welfare imperatively requires immediate action by the Board. AAG Froedge stated that the due process that is afforded to the physician in this type of proceeding is a full evidentiary hearing that will be held expeditiously if summary action is taken by the Board.

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

**SECOND: Ms. Salter**

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

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

**MOTION PASSED.**

The Board entered into Executive Session at 7:25 p.m.

The Board returned to Open Session at 7:38 p.m.

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

Dr. Fromm stated that the additional allegations provide no new information, but rather are a continuation of the physician's prescribing practices for which the Board voted to revoke the physician's license at its June 11, 2014 meeting. Dr. Khera stated he believes there is ample evidence to suggest that there is a potential for harm.

Mr. Larson expressed his objection regarding AAG Froedge's participation in the Board's Executive Session and stated that it was his understanding that she had prosecuted Dr. Osborne in the case previously adjudicated by the Board. Mr. Larson added that there is no allegation of an imminent threat to the public, and that the allegations regarding the physician's prescribing do not rise to the imperative level that is required for the Board to summarily suspend the license. He asked that the Board allow the matters to continue on their natural path with the Board's process, and that the consideration of summary action be withdrawn. Ms. Froedge informed the Board that the legal advice she provided to the Board during its Executive Session pertained to the matters agendaized for this meeting, which have not been referred to Formal Hearing and therefore do not have an assigned prosecutor at this time.

The Board discussed the request for a continuance and determined that continuing the matter after one week would not provide any additional information or new facts for the Board to consider. Dr. Khera stated that he did not believe whether the physician poses a threat to the public would change by granting a one-week continuance. Several Board members spoke in favor of allowing the cases to follow the Board's usual process without taking summary action against the physician's license, noting that the Board's action to revoke the license still stands.

**MOTION: Dr. Fromm moved to direct Board staff to continue forward with the investigations in the Board's normal course of business.**

**SECOND: Dr. Gillard**

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

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

**MOTION PASSED.**

The meeting adjourned at 7:56 p.m.



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C. Lloyd Vest, II, Executive Director