



## Arizona Medical Board

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### DRAFT MINUTES FOR BOARD OFFSITE PLANNING MEETING

Held on Friday, June 7, 2013

**AT: Gainey Ranch Golf Club, 7600 Gainey Club Drive  
Scottsdale AZ 85258**

#### ***Board Members***

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

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

Harold Magalnick, M.D., Secretary

Andrea E. Ibáñez, Member At Large

Jodi A. Bain, Esq.

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

Ram R. Krishna, M.D.

Douglas D. Lee, M.D.

Richard T. Perry, M.D.

Wanda J. Salter, R.N.

William J. Thrift, M.D.

#### **CALL TO ORDER**

Dr. Khera called the meeting to order at 9:00 a.m.

#### **ROLL CALL**

The following Board members were present: Ms. Bain, Dr. Gillard, Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Dr. Perry, Ms. Salter, and Dr. Thrift.

#### **CALL TO THE PUBLIC**

Tenley Oberhaus and Eric Evans addressed the Board during the Call to the Public.

#### **1. LICENSING PROCESS/EXPIRED LICENSES**

Lisa Wynn, Executive Director, informed the Board that House Bill 2409 is currently pending the committee process and that it contains language regarding the consideration of expired licenses the same as licensure by endorsement. Dr. Krishna noted that other stat rules are autonomous in their own way when issuing a license. He pointed out that the Federation of State Medical Boards (FSMB) has been looking into the portability of licensure, and he stated it his opinion that three years of postgraduate training should be mandated nationwide.

The Board members questioned what process was currently in place that alerts physicians on a regular basis that their license is due to expire. Celina Shepherd, Licensing Office Manager, stated that a letter is mailed out to the physician 67 days prior to their renewal date. An online process is available for licensees to renew their Arizona medical license and four months post the renewal date, the license expires if it is not renewed. Ms. Shepherd stated that Board staff runs a report and contacts physicians telephonically whose license is expiring due to non-renewal. Once the license expires, there is no notice sent to the physician.

Dr. Perry stated that some physicians may not remember their renewal date, and suggested Board staff send the licensees registered letters. Dr. Lee agreed and suggested assessing the cost to the licensee as part of the late filing fee. Ms. Salter questioned how other boards notify their licensees of their renewals. She stated that she is responsible for renewing her Arizona license with the Board of Nursing. Ms. Ibáñez stated that sending the letters through registered mail is costly and involves more staff time. The Board instructed its staff to send two letters to licensees regarding their license renewal; the first shall be mailed two weeks prior to their renewal date, and the second shall be mailed two weeks after their renewal date.

#### **2. RULES-ARIZONA ADMINISTRATIVE CODE, TITLE 4, CHAPTER 16**

##### **A. Licensure-Article 2**

Ms. Wynn stated that Article 2 regards the Board's licensing rules. She informed the Board that a docket has been opened at the Governor's Office in an effort to update the rules. Ms. Wynn stated that the Ombudsman's Office filed a report

addressing the Board's specific interpretation and implementation of rules and statutes. Ms. Wynn explained that the licensing rules were generated in 1998 and have not been updated since 2002. Over the course of time, Board and its staff had interpreted the rules in a way that is cost effective and less cumbersome on its licensees. Ms. Wynn stated that at the Board's direction, Board staff has been enforcing the rules more literally.

Dr. Magalnick expressed concern regarding physicians entering a new field of practice without review by the Board or its staff to ensure that they are safe to practice in their new field of medicine. Dr. Jenkins stated that it is her understanding that the Board issues a license to practice medicine, and that scope of practice is determined on more of a local level. Dr. Lee questioned how the Board can enforce rules that no longer apply to any of the Board's processes. Ms. Wynn stated that it is clearly the Board's responsibility as an agency to maintain updated rules that the Board abides by and enforces to the best of its ability. Jennifer Boucek, Assistant Attorney General, noted that there may be a rule that the Board is not following because it refers to a statute that no longer exists. Ms. Wynn added that Board staff is currently working with Kathleen Phillips, Rule Writer, and has submitted a proposal of rulemaking to the Governor's Regulatory Review Council, placing them on notice of the Board's intent to update Articles 1 and 2 with the addition of renewal rules that currently do not exist. Ms. Wynn stated that the proposed rules will not create any burden or increase fees for licensees.

## **B. Executive Director (ED) Duties-Article 5**

Dr. Khera noted that Board members have questioned their roles on the Board and whether they are to micromanage the Agency and its ED. Ms. Boucek explained that the ED is by statute appointed by the Board and given certain duties to carry out. She stated that the Board oversees the ED's actions and ensures that the ED is keeping with the goals and policies of the overall organization. Ms. Boucek stated that if the Board is alerted to any issues concerning the ED, the Board is obligated to perform due diligence in addressing the matter.

Dr. Magalnick noted that the previous Board Chair was made aware of concerns raised and established a committee to provide staff with the opportunity to bring forward any concerns regarding the agency or its staff, if it is believed that addressing their concerns by using the chain of command would be ineffective. Ms. Boucek provided the Board with a brief summary of why the Staff Relations Committee was formed. Ms. Wynn stated that the Board will have the opportunity to submit a final response to the Ombudsman's report, and that the final report will then be forwarded to the Committee of Reference, the Senate and House Health Committees, and the complainant as well as the Governor's Office. She informed the Board that the final report and response will be public.

Dr. Khera stated that as Board Chair, he will not be making significant changes alone, and that the full Board will participate in the decision making process. Dr. Krishna stated that the Board is responsible for the overall function of the Agency, but not to micromanage. He stated that the quality of care has not worsened in this State, and that Ms. Wynn has done a good job. Dr. Krishna further stated that if the Board has any concerns regarding the ED, then the Board can convene a meeting with the ED to discuss the issues. Ms. Boucek advised Board members to refer any members of the public that have made personal inquiries to individual Board members to the Board Chairman.

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

**SECOND: Dr. Jenkins**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

The Board entered into Executive Session at 11:04 a.m.

The Board returned to Open Session at 11:13 a.m.

No discussions or deliberations were made during Executive Session.

**MOTION: Ms. Ibáñez moved to interpret the term "lead board member" as referenced in R4-16-504 as Board Chair or designee.**

**SECOND: Dr. Gillard**

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

**MOTION PASSED.**

## **C. Committee**

### **3. DISCUSSION OF BOARD MEMBER DUTIES**

### **4. DISCUSSION OF PROPOSED COMMUNITY OUTREACH/EDUCATION COMMITTEE/ESTABLISHMENT OF COMMITTEE AND APPOINTMENT OF MEMBERS**

William Wolf, M.D., Chief Medical Consultant, reported that he speaks to medical students at several different venues providing information about the Board, the Arizona Medical Practice Act, and the licensure process. He stated that for the medical students, it is the first time they hear about the Board and its processes. He further reported that Celina Shepherd, Licensing Office Manager, provides presentations to different credentialing groups regarding the Board's licensing process.

Dr. Krishna noted that Ms. Wynn also speaks to several public organizations about how the Board functions. Ms. Wynn informed the Board that Pat McSorley, Investigations Office Manager, sits on a Law Enforcement Fraud Committee and that Ms. McSorley is the Agency's voice on that task force. Ms. Ibáñez suggested that Board members participate in the staff's presentations in the community. Dr. Wolf reported that Dr. Gillard has been kind enough to participate in the staff's presentations.

Dr. Khera briefly provided the Board with background regarding this discussion item. He stated that a Board member suggested that the Board form a Committee to provide outreach and education for the public to show the Board is actively involved in the community. Ms. Bain stated that she researched how other state boards provide community outreach and noted that some states hold a meeting twice a year in which three board members are present in an open forum for public comments. She stated that forming the Committee and providing more community outreach and education allows the community to have more access to the Board with full transparency of the Board. Dr. Krishna stated that the Board staff is proactively involved in the community. Dr. Magalnick stated that this does not require action by the Board and does not require a Committee. Dr. Jenkins noted that the community outreach is currently staff-driven and stated that Board members are asked by staff to participate. Dr. Thrift spoke in favor of encouraging Board staff to perform community outreach and education and that Board members volunteer to participate. He stated that forming additional committees may distract the Board members from their purpose on the Board, and may serve to be of no value to the Board.

The Board discussed promoting the community outreach and education. Ms. Bain recommended placing a calendar on the Board's public website listing the staff's scheduled outreach presentations. Dr. Khera proposed posting an agenda on the Board's website detailing the staff's scheduled community outreach and education.

## **5. UTILIZATION OF OUTSIDE MEDICAL CONSULTANTS**

Dr. Wolf informed the Board that there are approximately 1,400 Outside Medical Consultants (OMCs) on the Board's volunteer list to review cases. He stated that the OMCs are paid to review cases, and that the OMCs receive Continuing Medical Education (CME) credit for their reviews. Ms. Wynn stated that in the few cases that have gone to Formal Hearing, the OMCs may be called upon to testify and are reimbursed for their time. Dr. Wolf explained that the minimum criteria that qualify OMCs to review cases includes the physician must hold an active medical license, must have been in practice for at least five years, have no pending investigation, and have no record of discipline. Dr. Wolf noted that a question had been raised regarding OMCs are required to be board certified. He stated that the question was posed to other state EDs and the answers varied. Dr. Wolf stated that one ED responded stating that not all OMCs were board certified so that the individual was equivalently credentialed to the licensee who is under investigation.

Dr. Jenkins questioned whether the OMCs receive training before reviewing cases for the Board. Dr. Wolf stated that there is an online process available for the OMCs to initially review, and Ms. Wynn pointed out that the OMCs are provided with templates and sample reports. Dr. Thrift noted that there have been times in the past where the Staff Investigational Review Committee (SIRC) reports reference an OMC report that was found to be internally inconsistent. Dr. Wolf explained that if the OMC identifies a deviation from the standard of care, but then later opines within the same report that there was no deviation from the standard of care, then the report is deemed internally inconsistent and a second review is often obtained. Dr. Perry expressed concern that the Board may not recognize the complexity of some cases, and that the licensee's alternative approach may have been appropriate. Dr. Lee pointed out that licensee's often obtain several expert opinions to counter the OMCs report and may demonstrate that the licensee did in fact meet the standard of care in their particular case.

Ms. Boucek stated that the lead Board member conducting a Formal Interview is chosen by SIRC because they may have the background and expertise to address the physician regarding the issue at hand. She stated that Board members can bring their own judgment to bear in a case and formulate their own standard of care and deviation. Dr. Jenkins commented that this is most appropriate for physicians that work in the rural community where the OMC articulated a standard of care, but a Board member may disagree based on personal experience of having practiced in a rural community.

## **6. PHYSICIAN RE-ENTRY**

Dr. Wolf stated that the issue of physician re-entry to practice was discussed with other EDs throughout the country and that some states have rules and statutes addressing the issue while others address it on a case by case basis. Dr. Wolf stated that while some states require exams or evaluations prior to a physician's practice re-entry, other states require a re-entry plan with a very detailed outline of how the physician planned to re-enter the practice of medicine. Board members discussed the Board's ability to issue a probationary license, and noted that it is limited to issues regarding alcohol or substance abuse, or psychiatric monitoring. Dr. Wolf stated that if a physician applicant has had a significant time period in which they were not practicing, they may be asked to undergo an evaluation.

Dr. Krishna stated that the FSMB has been looking into this issue, and that they are in the process of drafting guidelines as to how long is too long of a time period that a physician has been out of practice, considering whether the physician has maintained their CME credit hours, or if they require to be mentored or to undergo a mini residency or fellowship prior to practice re-entry. Dr. Lee questioned if there are ways to monitor physicians that maintain their license, but are not actively

practicing medicine. Dr. Wolf reported that the physician's CME credits are audited, but that the Board does not monitor whether physicians who hold active licenses are actively practicing.

## **7. TELEMEDICINE STATUTES, POLICY, AND GUIDELINES**

Ms. Boucek stated that there is a statute that was enacted to address internet prescribing. She stated that the statute provides that the physician shall not prescribe any medications absent a physical exam, though physical exam is not defined. Ms. Boucek informed the Board that it can draft a policy indicating what the exam requires. Dr. Perry stated that this is clearly the future of medicine, and questioned the Board's position regarding internet prescribing of non-dangerous drugs.

Dr. Krishna suggested that Board staff contact the New Mexico Medical Board and stated that New Mexico is the leader in telemedicine and is currently working on guidelines to address the issues concerning telemedicine. He informed the Board that he participated on the telemedicine panel at the FSMB, and one issue that was discussed is the need for a healthcare provider on one end who is seeing the patient and communicating with the physician performing the telemedicine. Dr. Thrift agreed and stated that having a healthcare provider perform a "laying of the hands" examination is appropriate versus telephonic medicine in which the patient is not examined by a provider. Dr. Lee stated that telemedicine has been a benefit to the rural communities and stated that it continues to evolve. He spoke in favor of the Board drafting a policy.

## **8. NARCOTIC PRESCRIBING UPDATE/DISCUSSION**

Ms. Wynn updated the Board regarding narcotic prescribing and the escalation in prescription drug overdoses. She stated that she has been working with the Board and the Governor's office in looking at ways for the Board to provide resources and education to its licensees as well as resources available for patients. Ms. Wynn stated that she met with Dr. Fred Johnson through the Governor's substance abuse partnership meeting where he described how the brain responds to opiates over time and the need for narcotics to maintain a baseline over a period of time. She stated Dr. Johnson proposes creating tools to make the information available through patient education. She informed the Board of an increase over the past year in the percent of Board disciplinary actions issued for cases involving inappropriate prescribing.

Ms. Wynn stated that the Agency is currently researching how the Board can be more proactive. She stated that some pain physicians have called upon the Board to embrace or approve a proposed pain template. She stated, however, that it has never been the role of the Board to establish such a specific standard of care. Dr. Magalnick commented that pain management in children is a major issue, and stated that very often no one is willing to take ownership when the chronic pain becomes an issue in pediatric patients. Ms. Wynn referred the Board members to the Board's guidelines regarding pain management of chronic non-cancer pain and the use of opioids in the management of chronic non-cancer pain, which she stated has been sponsored in part by the FSMB. Dr. Khera stated that he is reluctant for the Board to approve a pain template. Dr. Lee questioned the purpose of the endorsement of the pain template. He stated that societies seem to have endorsed it and are backing it. Ms. Ibáñez spoke in favor of the Board not endorsing any particular pain template as she believes it places the Board in a liability situation and does not support the Board's mission in protecting the public.

## **9. BOARD MEMBER TRAINING**

Ms. Boucek provided the Board with a PowerPoint presentation regarding Formal Interviews and Formal Hearings. A copy of Ms. Boucek's presentation can be made available upon public request.

## **10. FUTURE DIRECTION AND DISCUSSION ITEMS**

Ms. Wynn informed the Board that the Public Citizen published its annual report regarding the ranking of state medical boards related to board sanctions. She stated that the Arizona Medical Board, for the past six years, had been ranked in the top ten for the boards disciplinary sanctions, and that last year, the Board ranked as number eleven. She stated that she suspects that in 2013, the Board will be listed in the bottom ten on the ranking system for boards that have decreased in issuing disciplinary actions.

The meeting adjourned at 2:45 p.m.



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Lisa S. Wynn, Executive Director