



## Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### **DRAFT MINUTES FOR REGULAR SESSION MEETING Held on Wednesday, October 5, 2011 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: Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board member was absent: Dr. Gillard.

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

SP spoke during the call to the public regarding her case with the Ombudsman's Office, which she stated the findings of the case substantiated her allegations of unprofessional conduct that the Board previously dismissed. She requested that the board abide by the recommendations of the Ombudsman's Office and reopen her case. Dr. Arnaldo Trabucco spoke during the call to public regarding an open investigation. He alleged that the physician in the case deviated from the standard of care and jeopardized the patient's life by subjecting him to several other surgical interventions. All other individuals who addressed the Board during the call to the public appear beneath the case referenced.

#### **EXECUTIVE DIRECTOR'S REPORT**

Lisa S. Wynn, Executive Director, reported that Board staff is currently focusing on the Licensing Office to streamline its processes. She thanked Amanda Diehl, Deputy Executive Director, for her work with the Licensing Team in looking at ways to process initial licenses quicker. Dr. Krishna informed the Board and staff that physicians who have recently moved to Yuma County have expressed that they are very pleased with the Board's timing and professionalism during the licensure process. Ms. Wynn informed the Board that staff has received positive feedback regarding the Board's online renewal process. She reported that the Agency will be looking into what legislative changes may be necessary to keep the rules and statutes current as they pertain to the Board's licensing processes. Ms. Wynn also stated that the staff is currently evaluating the value and usefulness of the wallet cards issued at the time of initial licensure and at renewal. Dr. Jenkins stated that she recently used her wallet care when she wrote a prescription while she was out of state. Dr. Thrift stated that he recently was questioned by a pharmacist regarding his wallet card while he was out of town as well.

Dr. Krishna commented that the FSMB recently met in Washington, and discussed the issue of a uniform application. He stated the FSMB is focused on coordinating with different states in an effort to have regional licensing opportunities, but have the license controlled by the issuing state. Dr. Krishna recognized that the AMB's licensing requirements are different than other states, as US graduates are required to only obtain one year of postgraduate training rotation or internship. Ms. Wynn stated that the Agency can look at ways that would safely align some of the Board's requirements with neighboring states. Ms. Wynn informed the Board that October 31, 2011 is the Board's Sunset Review, and invited Board members to attend but stated their attendance is not required. She stated the full audit report will be presented by the Auditor General's Office to the Committee of Reference, which will consist of both the House and Senate Health Committees. Ms. Wynn stated that she will be given the opportunity to answer any questions the Committee may have, and that members of the public will also have an opportunity to address the Committee.

Ms. Wynn informed the Board that staff is currently preparing for an Offsite Planning Meeting that is tentatively scheduled for February 2012. She stated that Chris Banyas, Board Operations Manager, has been working with staff on agenda topics. She asked that Board members contact her with any issues they would like included on the Agenda. She further stated that the Offsite Meeting will provide an opportunity for a Board Education Seminar, and that she is hopeful to have the remaining two Board member positions filled by that time. Dr. Thrift commented on the Board's process for the orientation of new Board members. He suggested that part of the process include having the opportunity to sit through a Board meeting to experience the Board's process for adjudicating cases.

**CHAIR'S REPORT**

Dr. Lee welcomed Dr. Magalnick to the Board. He reported that he recently attended a meeting of the Arizona Medical Association (ArMA) and stated that Ms. Wynn did a very nice job of presenting. He stated that there were no controversial issues mentioned by ArMA regarding the Board.

**LEGAL ADVISOR'S REPORT**

Jennifer Boucek, Assistant Attorney General, Legal Advisor, reported that Camila Alarcon resigned her position with the Attorney General's Office to enter into private practice. She stated that there are currently 11 cases that have been referred to Formal Hearing, 2 of which have been referred to outside counsel. Ms. Boucek informed the Board that three cases have been scheduled for Formal Hearing, and that staff is awaiting the recommended decision on two cases.

**APPROVAL OF ANNUAL FEES**

Dr. Lee commended Board staff for being fiscally responsible, and he noted that the Annual Fees will remain as they currently stand with no increases.

**MOTION: Dr. Krishna moved to approve the Annual Fees as they currently stand.**

**SECONDED: Ms. Proulx**

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

**MOTION PASSED.**

**APPROVAL OF MINUTES**

**MOTION: Dr. Schneider moved to approve the August 10, 2011 Regular Session Meeting, including Executive Session.**

**SECONDED: Dr. Krishna**

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

**MOTION PASSED.**

**ADVISORY LETTERS**

**MOTION: Dr. Jenkins moved to issue an Advisory Letter in item numbers 1-4, 6-9, 12, and 15-18.**

**SECONDED: Dr. Schneider**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0132A	BILL D. HOLLOMAN, M.D.	33572	Issue an Advisory Letter for failure to review hip x-rays in a timely manner. This matter does not rise to the level of discipline.

Complainant MC spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-10-1538A	FRANK D. KRESOCK, M.D.	26534	Issue an Advisory Letter for failure to address findings consistent with or suggestive of worsening or recurrent congestive heart failure. This matter does not rise to the level of discipline.

Attorney Joseph Huey spoke during the call to the public on behalf of Dr. Kresock.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-10-1518A	HENRY K. LEE, M.D.	28563	Issue an Advisory Letter for ordering chemotherapy and port placement prior to establishing the diagnosis of cancer. The violation was a one-time occurrence that does not rise to the level of discipline.
4.	MD-11-0690A	NATIVIDAD VERDEJO-PEREZ, M.D.	22684	Issue an Advisory Letter for prescribing controlled substances to members of the physician's immediate family. This matter does not rise to the level of discipline.
5.	MD-10-0691A	ROSALYN M. MORRELL, M.D.	33268	Dismiss.

Dr. Morrell spoke during the call to the public. Dr. Thrift observed that a check mark was made and then erased from a box on the consent form to indicate whether a discussion occurred regarding the risk of radiation pneumonitis. Dr. Thrift noted that Dr. Morrell, in her responses to the Board and during her call to the public statement, denied that the patient was at risk for radiation pneumonitis. He found that the check mark did not match others made on the permit note. Dr. Wolf summarized that the patient had alleged that Dr. Morrell failed to inform him of risks associated with radiation therapy and that she altered medical records. The Medical Consultant found that Dr. Morrell deviated from the standard of care by failing to advise the patient of the risk of radiation pneumonitis. Dr. Wolf stated that Board staff did not find that there was a preponderance of evidence to sustain the

allegation of altered medical records, but that the patient should have been advised of the risk of radiation pneumonitis. Dr. Jenkins opined that the patient was at almost zero risk of radiation pneumonitis given that the stump treated with radiation would not have developed it that quickly after radiation. Dr. Wolf stated that he presented this case to the tumor board at the hospital, and that there were five radiation oncologists present; four of which agreed that the risk should have been presented to the patient. Dr. Wolf further stated that two of the four specialists thought that the risk was low. Dr. Krishna stated that the evidence in the case is not clear and that the timing was too short for the development of radiation pneumonitis post radiation therapy. Dr. Krishna spoke in favor of dismissal.

**MOTION: Dr. Krishna moved for dismissal.**

**SECONDED: Dr. Schneider**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-10-1327A	STEFANIE A. WORKMAN, M.D.	18831	Issue an Advisory Letter for inadequate medical records.
7.	MD-10-1327C	JAMES J. SMITH, M.D.	14623	Issue an Advisory Letter for inadequate medical records.
8.	MD-11-0602A	ERNEST R. KAUFMAN, M.D.	6329	Issue an Advisory Letter for prescribing a controlled substance to a member of the physician's immediate family. This matter does not rise to the level of discipline.
9.	MD-11-0445A	PAUL D. MCKERNAN, M.D.	17534	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.
10.	MD-11-0503A	SAADEH A. SAADEH, M.D.	27517	Issue an Advisory Letter for delay in performance of coronary angiography in a patient with dyspnea and a nuclear stress test positive for substantial myocardial ischemia. This matter does not rise to the level of discipline.

Attorney Jim Ledbetter spoke during the call to the public on behalf of Dr. Saadeh. Dr. Lee noted that a lot of data was presented during the call to the public, and questioned what Dr. Khera's thoughts were as to the standard of care in medically treating stable angina. Dr. Khera stated that issuing an Advisory Letter is appropriate in this case. Dr. Khera noted that the physician had argued what he believed optimal treatment would be for a patient in this situation. Dr. Khera stated he believed that optimal medical therapy was not provided to this patient by Dr. Saadeh. He observed that a large defect was noted on a nuclear scan. Dr. Khera stated that with a large defect having been identified, Dr. Saadeh should have seen the patient sooner to discuss the findings and provide treatment options. Dr. Khera opined that the patient's Coumadin was not appropriately discontinued.

**MOTION: Dr. Lee moved to issue an Advisory Letter for delay in performance of coronary angiography in a patient with dyspnea and a nuclear stress test positive for substantial myocardial ischemia. This matter does not rise to the level of discipline.**

**SECONDED: Dr. Krishna**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-11-0288A	PAUL T. SUTERA, M.D.	21975	Issue an Advisory Letter for failure to periodically evaluate a patient while prescribing long term opioids and for writing additional opioids for a non-compliant patient without appropriate investigation and counseling. This matter does not rise to the level of discipline.

Dr. Thrift stated that he agreed with the recommendation for an Advisory Letter, but that he was concerned with the care provided by the nurse practitioner. He instructed Board staff to refer the matter to the Arizona Board of Nursing.

**MOTION: Dr. Krishna moved to issue an Advisory Letter for failure to periodically evaluate a patient while prescribing long term opioids and for writing additional opioids for a non-compliant patient without appropriate investigation and counseling. This matter does not rise to the level of discipline.**

**SECONDED: Dr. Thrift**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-11-0478A	BRIAN H. PERLMUTTER, M.D.	27305	Issue an Advisory Letter for failing to document the performance of a pre-procedural examination and a discussion of informed consent and risks of the procedure on Aspirin and Plavix prior to the procedure. This matter does not rise to the level of discipline.

Patient HM spoke during the call to the public. Dr. Perlmutter also spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
13.	MD-11-0472A	RICHARD PLEVA, M.D.	28809	Dismiss.

Dr. Pleva spoke during the call to the public. Dr. Thrift observed that the standards articulated by the Medical Consultant are considered to be best practice, and stated he believed that Dr. Pleva met the standard of care in this case. Dr. Wolf stated that

this was a tough case, and that the Consultant opined that ultrasound guided biopsy was mandatory in this case, and that Dr. Pleva performed a liver biopsy too soon after the patient's previous liver biopsies in the past ten years that had not changed. Dr. Lee commented that the use of ultrasound is clearly becoming more common place within the medical community, and he questioned whether the standard of care required ultrasound guidance when performing liver biopsies. Dr. Wolf stated that the Consultant conceded in his supplemental report that ultrasound guidance is not mandatory, but nonetheless maintained his position that Dr. Pleva deviated from the standard of care in this case. Dr. Jenkins noted that in the current case, Dr. Pleva had the option of performing a blind liver biopsy or referring the patient to a radiologist to perform an ultrasound guided liver biopsy. Dr. Krishna questioned whether Dr. Pleva informed the patient that potential complications of the procedure include perforation. Dr. Jenkins noted that Dr. Pleva documented that organ perforation is a possible complication and that an alternative option is an ultrasound guided liver biopsy.

**MOTION: Dr. Krishna moved for dismissal.**

**SECONDED: Dr. Jenkins**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
14.	MD-11-0266A	WILLIAM J. PEKARSKE, M.D.	26555	Dismiss.

Dr. Thrift stated he believed that Dr. Pekarske did his best under the circumstances in this case. Dr. Lee stated he did not find any particular issues regarding Dr. Pekarske's care in this case. Dr. Thrift observed that Dr. Pekarske had a very limited time to administer the anesthesia in this emergent surgery case.

**MOTION: Dr. Krishna moved for dismissal.**

**SECONDED: Dr. Jenkins**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
15.	MD-11-0055A	MOHAMMAD B. KHAN, M.D.	37094	Issue an Advisory Letter for failure to immediately increase the steroid dose in a patient with temporal arteritis. This matter does not rise to the level of discipline.

Dr. Khan spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-11-0967A	HARSHAD S. PATEL, M.D.	22757	Issue an Advisory Letter for failure to safe guard patient records. This matter does not rise to the level of discipline.
17.	MD-11-0352A	STEPHEN J. GRAHAM, M.D.	19987	Issue an Advisory Letter for failure to transfer a patient with calf pain, chest pain, and hemoptysis to the emergency room. This matter does not rise to the level of discipline.
18.	MD-11-0839A	ORSON A. ANDERSON, M.D.	40885	Issue an Advisory Letter for action taken by the State of California. This matter does not rise to the level of discipline.

#### **NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION (CME) ORDER**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0650A	CHARLISA F. ALLEN, M.D.	23379	Issue a Non-Disciplinary CME Order to complete an intensive boundaries course within six months. This matter does not rise to the level of discipline.

**MOTION: Dr. Jenkins moved to issue a Non-Disciplinary CME Order to complete an intensive boundaries course within six months. This matter does not rise to the level of discipline.**

**SECONDED: Ms. Proulx**

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

**MOTION PASSED.**

#### **REVIEW OF EXECUTIVE DIRECTOR DISMISSALS**

**MOTION: Dr. Schneider moved to uphold the dismissal in item numbers 1-4, and 7-11.**

**SECONDED: Dr. Krishna**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0192A	KENT W. COX, M.D.	24584	Uphold the dismissal.

Complainant LS spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0071A	SHEL-DON J. LEGARRETA, M.D.	25100	Uphold the dismissal.
3.	MD-11-0635A	MARC L. LEE, M.D.	9792	Uphold the dismissal.
4.	MD-10-1494A	MIN C. KIM, M.D.	36025	Uphold the dismissal.

Attorney Mike Ryan spoke during the call to the public on behalf of Dr. Kim.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-11-0652A	ROBERT M. DRYDEN, M.D.	6151	Uphold the dismissal.

Dr. Dryden spoke during the call to the public. Angelo Mattalino, M.D., Medical Consultant, summarized that this case involved a patient that was not pleased with the results of a plastic surgery procedure in that there was no weight loss after the surgery. Dr. Mattalino noted that there was no guarantee to the patient that weight loss would occur, which was documented in the permit for the procedure.

**MOTION: Dr. Krishna moved to uphold the dismissal.**

**SECONDED: Ms. Proulx**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-11-0940A	ERIC B. FARBER, M.D.	27406	Return the case for further investigation to obtain the operative report from the patient's second surgery.

Attorney Shane Armstrong spoke during the call to the public on behalf of Dr. Farber. Dr. Jenkins observed that this matter involved a patient who underwent cataract surgery performed by Dr. Farber, with a postoperative complication of a macular hole. Dr. Jenkins noted that there was no deviation from the standard of care identified in this case. Dr. Jenkins also noted that the patient's medical record mentioned a second operation, but that there was no operative report in the chart from a second operation. Dr. Coffey stated that the second operation was performed by another provider. Dr. Jenkins questioned whether the operative report from the second operation should be obtained for review prior to final adjudication of the case.

**MOTION: Dr. Krishna moved to return the case for further investigation to obtain the operative report from the patient's second surgery.**

**SECONDED: Dr. Jenkins**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	MD-11-0671A	MARILYN K. CROGHAN, M.D.	15650	Uphold the dismissal.
8.	MD-11-0726A	JULIO HERNANDEZ, M.D.	22572	Uphold the dismissal.

Complainant RAG spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-11-0735A	STEPHANIE C. MAYES, M.D.	36433	Uphold the dismissal.

Attorney Troy Roberts spoke during the call to the public on behalf of Dr. Mayes.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-10-1483A	JOHN C. MEDLEN, M.D.	12924	Uphold the dismissal.

Attorney Jeff Pyburn spoke during the call to the public on behalf of Dr. Medlen.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-11-0524A	TIM B. HUNTER, M.D.	8580	Uphold the dismissal.

Attorney Michelle Thompson spoke during the call to the public on behalf of Dr. Hunter.

## OTHER BUSINESS

**MOTION: Dr. Lee moved to accept the proposed Consent Agreement in item numbers 2-4.**

**SECONDED: Dr. Schneider**

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

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0120A	LURALIE L. LEONARD, M.D.	27818	Accept the proposed Consent Agreement for a Letter of Reprimand.

Dr. Thrift observed that Dr. Leonard was called in to assist in delivering twins, with the first twin delivered vaginally and the second twin with a change in position requiring delivered via cesarean section with poor Apgars. Dr. Thrift stated that he believed Dr. Leonard was caught in a bad situation where she did everything she could at the time. Dr. Thrift opined that Dr. Leonard had an error in judgment by not diluting the baby with volume expanders. Dr. Thrift found it mitigating that Dr. Leonard has completed CME concerning the issues identified in this case.

**MOTION: Dr. Schneider moved to accept the proposed Consent Agreement for a Letter of Reprimand.**

**SECONDED: Dr. Lee**

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

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-10-0627A	RAUL J. RODRIGUEZ SORA, M.D.	21047	Accept the proposed Consent Agreement for a Letter of Reprimand and Five Year Probation to participate in PHP. Dr. Sora's PHP participation shall be retroactive to September 2, 2010. Probation to include psychiatric therapy. After 12 months, Dr. Sora may request termination of the psychiatric treatment requirement.
3.	MD-10-0395A MD-10-0884A	TERESA L. JACKSON, M.D.	32627	Accept the proposed Consent Agreement for a Decree of Censure, Practice Restriction and Five Year Probation to participate in PHP. Dr. Jackson's PHP participation shall be retroactive to June 21, 2011. Dr. Jackson shall not practice medicine in Arizona for a period of at least six months, and she shall not return to practice until deemed safe to practice by the PHP Monitor. Within 3 Years, Dr. Jackson shall pay a Civil Penalty in the amount of \$10,000. The Probation shall include psychiatric treatment and psychotherapy. After 12 months, Dr. Jackson may request termination of the psychiatric and psychotherapy requirement.
4.	MD-11-0865A	SUSAN D. LAMAN, M.D.	31195	Accept the proposed Consent Agreement for License Reactivation and Five Year Probation to participate in PHP. Dr. Laman's PHP participation shall be retroactive to July 14, 2011. In the event of chemical dependency relapse or the use of drugs or alcohol in violation of this Order, Dr. Laman's license shall be summarily suspended pending a hearing for Revocation.
5.	MD-11-0080A	STEPHEN M. GUTTING, M.D.	35434	Dismiss.

Dr. Schneider questioned whether the Executive Director had the authority to dismiss malpractice cases. Ms. Wynn reported that she has been delegated by the Board to dismiss malpractice cases that resulted in a settlement, but that matters involving a malpractice judgment cannot be dismissed by the Executive Director and are forwarded to the Board for consideration.

**MOTION:** Dr. Krishna moved for dismissal.

**SECONDED:** Dr. Jenkins

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-10-1418A	MICHAEL P. LOWE, M.D.	29130	Deny the appeal of the Executive Director's referral to Formal Hearing.

Attorney Paul Forrest spoke during the call to the public on behalf of Dr. Lowe. Dr. Lee noted the comments made during the call to the public and questioned whether the matter should proceed given the pending criminal case. Ms. Boucek stated that when cases are referred to the Attorney General's Office with pending criminal cases, they take into consideration whether the criminal case will affect the outcome of the Board's case. Ms. Boucek stated that there is no time constraint for cases referred to hearing by the Executive Director. Dr. Krishna observed that this matter involves patient-physician gift giving, and that the patient in this case had Alzheimer's and dementia. Dr. Krishna stated he found it appropriate to refer this complicated case for a full evidentiary hearing. Dr. Schneider questioned whether Dr. Lowe had elected a Formal Hearing. Dr. Wolf reported that the Staff Investigational Review Committee recommended revocation of Dr. Lowe's license, which requires referral to Formal Hearing.

**MOTION:** Dr. Krishna moved to deny the appeal of the Executive Director's referral to Formal Hearing.

**SECONDED:** Dr. Schneider

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	This matter was pulled from the Agenda.			
8.	MD-08-0840A	MICHAEL MAHL, M.D.	12868	Deny the request for modification of a Board Order.

Kathleen Muller, Physician Health Program, summarized that on June 9, 2009, Dr. Mahl entered into a Consent Agreement for License Reactivation, Letter of Reprimand, and Probation for PHP participation. The Order required Dr. Mahl to obtain CME in prescribing controlled substances and to employ a Board approved monitoring company to conduct quarterly chart reviews. Ms. Muller stated that the Order also provided that after two years of compliance, Dr. Mahl may petition for termination of the chart review requirement. Ms. Muller informed the Board that in December 2010, the Board received a report from the monitoring company that Dr. Mahl was non-compliant with his Board Order. A Medical Consultant reviewed six patient charts and on June 8, 2011, Dr. Mahl was issued an Advisory Letter by the Board for his failure to adequately evaluate a patient for substance abuse and for failure to perform physical exams on patients receiving Suboxone. Ms. Muller further stated that Board staff has recommended that the Board deny Dr. Mahl's request for modification of his Board Order.

**MOTION: Dr. Khera moved to deny the request for modification of a Board Order.**

**SECONDED: Dr. Krishna**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-09-1083A	KERRY COOPER, M.D.	28488	Termination of Dr. Cooper's July 15, 2010 Board Order for a Letter of Reprimand and Probation.

Ms. Muller informed the Board that Dr. Cooper has requested termination of his July 15, 2010 Board Order for a Letter of Reprimand and Probation to undergo psychotherapy and obtain CME. Ms. Muller stated that the terms of the Board Order provided that after twelve months, Dr. Cooper may petition for termination of the psychotherapy requirement. Ms. Muller reported that Dr. Cooper has completed the CME and that his treating psychotherapist supports his request to terminate psychotherapy. Ms. Muller informed the Board that Dr. Cooper has been compliant with the Order and that Board staff found his request to be appropriate.

**MOTION: Dr. Krishna moved to grant the request for termination of Dr. Cooper's July 15, 2010 Board Order for a Letter of Reprimand and Probation.**

**SECONDED: Ms. Proulx**

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-10-0471A	THOMAS S. SPENCER, M.D.	41026	Approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

**MOTION: Dr. Krishna moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.**

**SECONDED: Dr. Jenkins**

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

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

**MOTION PASSED.**

#### **LEGAL MATTERS**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-10-1161A	CHRISTOPHER J. CHURCH, M.D.	28790	Rescind the referral to Formal Hearing and accept the proposed Consent Agreement for Surrender of active license.

Anne Froedge, Assistant Attorney General, summarized that this case was referred to Formal Hearing on allegations of inappropriate touching. She stated that prior to scheduling the case for Formal Hearing, Dr. Church expressed his desire to surrender his medical license. Dr. Krishna commented that had the case proceeded to Formal Hearing, revocation may have been the result. He spoke in favor of accepting the proposed Consent Agreement as he believed it adequately protects the public.

**MOTION: Dr. Krishna moved to rescind the referral to Formal Hearing and accept the Proposed Consent Agreement for Surrender of active license.**

**SECONDED: Ms. Ibáñez**

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

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-10-1255A	JOHN T. PELLERITO, M.D.	14864	Deny the motion for rehearing/review.

Ms. Boucek provided a confidential memo for the Board's review, which she stated addressed the issues raised by Dr. Pellerito in his motion for rehearing/review.

**MOTION: Dr. Krishna moved to deny the motion for rehearing/review.**

**SECONDED: Dr. Jenkins**

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

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

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-10-1440A	GOVINDASAMY SANKAR, M.D.	33633	Deny the motion for rehearing/review.

Complainant SB spoke during the call to the public. Dr. Krishna stated that no new information has been presented to support a rehearing/review in this matter.

**MOTION: Dr. Krishna moved to deny the motion for rehearing/review.**  
**SECONDED: Dr. Khera**

Attorney Paul Giancola was present on behalf of Dr. Sankar. He provided a brief overview of the Board's findings in this case. He stated that there was concern regarding Dr. Sankar's response to the finding of THC in the patient's urine during an unrelated hospitalization as well as the frequency of inquiring about the patient's current medications. Mr. Giancola stated that the Board, during its investigation, did not obtain the patient's medical records from the other treating physician. Mr. Giancola stated that the Medical Consultant who reviewed this case was not a pain management specialist though the Board's guidelines stated that a physician specializing in pain management will review these types of cases. Mr. Giancola stated that rehearing of the case is appropriate given that there was only potential harm identified, that Dr. Sankar has no prior Board history, and that Dr. Sankar has indicated he has left that practice and will no longer be treating chronic pain patients.

**MOTION: Dr. Krishna moved to enter into Executive Session to receive legal advice.**  
**SECONDED: Dr. Jenkins**  
**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**  
**MOTION PASSED.**

The Board entered into Executive Session at 10:35 a.m.  
The Board returned to Open Session at 10:43 a.m.  
No discussions or deliberations were made during Executive Session.

Dr. Krishna noted the statements made by Mr. Giancola regarding the Board's failure to obtain information from other sources, and stated that the Board had the same information as Dr. Sankar when the case was adjudicated. Dr. Jenkins stated that if the physician felt that review of the information was imperative, he had the opportunity to provide that information to the Board during the course of the investigation. Dr. Jenkins noted Mr. Giancola's statement regarding having a specialist review the case and stated that it is the Board's policy to have a physician review the matter that is within the same specialty as the physician whose care is being reviewed. Dr. Jenkins noted that Dr. Sankar is not a pain management specialist.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board member was absent: Dr. Gillard.**  
**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**  
**MOTION PASSED.**

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-09-1350B MD-10-1170A	EMILIO LUNA, M.D.	41114	Adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order for License Revocation.

Board members indicated that they received and reviewed the administrative record of the Formal Hearing in this matter. Dr. Luna was not present during the Board's consideration of the cases. Anne Froedge, Assistant Attorney General, summarized that Dr. Luna was arrested and indicted on charges involving child pornography allegations. She stated Dr. Luna was subsequently released and monitored with an ankle bracelet, and that he later cut the bracelet and absconded. Ms. Froedge reported that the ALJ recommended revoking Dr. Luna's medical license, and that the State is in agreement with one minor modification. She stated that the State is not requesting assessment of Formal Hearing costs to Dr. Luna, as recommended by the ALJ.

**MOTION: Dr. Krishna moved to adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order for License Revocation.**  
**SECONDED: Dr. Schneider**  
**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Jenkins, Dr. Khera, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board member was absent: Dr. Gillard.**  
**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.**  
**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0035A	JULES F. LEVEY, M.D.	N/A	Adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order to grant Dr. Levey an Arizona medical license.

Board members indicated that they received and reviewed the administrative record of the formal hearing in this matter. Ms. Boucek informed the Board that the ALJ determined that the applicant should be granted a license to practice medicine based on the evidence presented at the Formal Hearing. Ms. Boucek stated that the ALJ found in part that the quality of care concerns raised by Board staff pertained to a case that occurred many years ago. She stated that any concerns raised had been mitigated by the intervening years and the fact that no additional complaints were made.

Dr. Levey was present without legal counsel. He stated that he followed the Board's process and accepts the ALJ's recommendation to grant him an Arizona medical license. Dr. Krishna observed that the ALJ recommended that Dr. Levey be granted a license subject to the condition that he be prohibited from performing surgery until submitting evidence to the Board that he is up to date with his surgical knowledge and skills. Ms. Boucek informed the Board that Dr. Levey has indicated that he does not intend to perform surgery in Arizona. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board that there is a legal issue with imposing a restriction on Dr. Levey's medical license. He recommended that the Board enter into Executive Session to receive legal advice.

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

**SECONDED: Dr. Khera**

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

**MOTION PASSED.**

The Board entered into Executive Session at 10:11 a.m.

The Board returned to Open Session at 10:21 a.m.

No discussions or deliberations were made during Executive Session.

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

**SECONDED: Dr. Lee**

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

**MOTION PASSED.**

**MOTION: Dr. Krishna moved to adopt and modify the ALJ's recommended Order to grant Dr. Levey an Arizona Medical License.**

**SECONDED: Dr. Jenkins**

Mr. Munns instructed the Board to state its rationale for modifying the ALJ's recommended decision. Dr. Krishna stated that since an investigational interview or Formal Interview has not been conducted, Dr. Levey shall be issued an unrestricted license to practice medicine in Arizona. Dr. Krishna stated that he is satisfied with Dr. Levey's indication that he will no longer be practicing surgery, and requested Dr. Levey to state so for the record. Dr. Levey stated that he has not practiced general surgery since 2008 and that it is not his desire to practice general surgery in Arizona. Mr. Munns questioned whether the Board is making its decision based primarily on Dr. Levey's representation that he will not be practicing surgery. Dr. Krishna stated that it is one of the primary reasons.

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

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

**MOTION PASSED.**

#### **FORMAL INTERVIEWS**

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
1.	MD-11-0122A	JOAN C. MITRIUS, M.D.	23253	Dismiss.

Dr. Lee was recused from this case. Dr. Mitrius was present with legal counsel, Mr. Thomas Bakker. Dr. Wolf summarized that Dr. Mitrius failed to ensure that the patient had an adequate colon prep resulting in an incomplete colonoscopy and barium enema. Dr. Jenkins commented that her primary concern with this case was the lack of communication with the patient. Dr. Mitrius stated that she has made the appropriate changes in her practice to remediate the Board's concern. She explained that she currently has patients present to her office to discuss the findings in cases where she receives a vague barium enema report and to discuss the available options. Dr. Schneider stated that she does not feel that the cancer would have been visible at the time of the colonoscopy. Mr. Bakker stated that Dr. Mitrius evaluated the patient's right side, which did not show any concerning lesions or masses in that area. He pointed out that the patient's cancer was on the left side, which was not obscured on the report. Dr. Jenkins stated that she struggled with this case, and that the three year follow up recommended by Dr. Mitrius was appropriate, even if a small polyp had been identified in the right colon at that time. Dr. Jenkins observed that the patient's cancer was found in the sigmoid colon, which is an area that cannot be seen on colonoscopy. Dr. Jenkins stated that her only concern in the case is

the patient communication issue and she noted Dr. Mitrius has made changes to her practice in that regard. Dr. Khera agreed and commented that he believed that Dr. Mitrius met the standard of care in this case.

**MOTION: Dr. Krishna moved for dismissal.**

**SECONDED: Dr. Jenkins**

Dr. Thrift observed that Dr. Mitrius has made changes in her practice in the way she communicates with her patients. He spoke in favor of dismissal. Dr. Schneider spoke against the motion and stated that the patient education and discussion was lacking on Dr. Mitrius' part. Dr. Krishna spoke in favor of the motion and stated that he appreciated the changes Dr. Mitrius has made to her practice.

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

**VOTE: 7-yay, 1-nay, 0-abstain, 1-recuse, 1-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
2.	MD-11-0471A	TIN T. WIN, M.D.	28212	This matter was rescheduled.

This matter was rescheduled for consideration of a summary action.

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
3.	MD-11-0325A	ADOLBEN Y. MONTESCLAROS, M.D.	17681	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

Dr. Montesclaros was present without legal counsel. Dr. Coffey summarized that Dr. Montesclaros failed to order a surgical consultation and admission for the patient's persistent pain and hemodynamic instability, he failed to recognize the patient's hemodynamic instability and performed inadequate resuscitation, and he failed to maintain adequate medical records in this case. Dr. Montesclaros stated that his exam findings did not indicate any condition that would require a surgical consultation. Dr. Montesclaros reported that the patient had experienced seven episodes of similar abdominal pain in the past that spontaneously resolved. He stated that the patient felt that she was comfortable and stable to be discharged, and that he did not find it necessary to keep her for observation. Board members noted that the patient received IM Morphine 10mg thirty minutes prior to her discharge. Dr. Jenkins noted that the patient was tachycardic with a benign abdominal exam. She questioned Dr. Montesclaros concerning what his current examination would consist of for a similar patient encounter in the emergency department. Dr. Montesclaros explained that based on the patient's history of prior abdominal surgery, pain that cannot be relieved, and the progression of symptoms, he would first consider whether the patient had a surgical or non-surgical abdomen. Dr. Montesclaros reiterated that his findings did not show any indication that he should seek a surgical consultation. Dr. Jenkins found that Dr. Montesclaros engaged in unprofessional conduct by deviating from the standard of care and by failing to maintain adequate medical records.

**MOTION: Dr. Jenkins moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(e) - Failing or refusing to maintain adequate records on a patient; and A.R.S. §32-1401(27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.**

**SECONDED: Ms. Ibáñez**

Dr. Khera spoke against the motion and stated that he believed Dr. Montesclaros did his best in this situation. Dr. Jenkins disagreed and stated that general surgeons learn early in their training that pain out of proportion to the examination is indicative of dead bowel. Dr. Jenkins stated that Dr. Montesclaros should have sought a surgical consultation, kept the patient for observation, or ordered a CT scan of the abdomen. Dr. Khera stated that he did not believe the patient had a volvulus at the time of this emergency room visit.

**VOTE: 8-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.**

**MOTION PASSED.**

Dr. Jenkins stated that she believed this matter rises to the level of discipline.

**MOTION: Dr. Jenkins moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.**

**SECONDED: Dr. Krishna**

Dr. Lee questioned whether Dr. Montesclaros would benefit from obtaining CME. Dr. Thrift stated that there are a number of courses available regarding advanced life support, but that there may not be a course regarding the specific issues identified in this case.

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

**VOTE:** 8-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
4.	MD-11-0273A	WILLIAM T. MESHIER, M.D.	15822	The Board took no action on this matter.

Dr. Lee stated that Dr. Meshier entered into an Interim Practice Restriction and that the case has been returned to the Investigations Office. Therefore, the Board took no action on this matter.

The meeting adjourned at 2:33 p.m.



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Lisa S. Wynn, Executive Director