



Arizona Medical Board

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FINAL MINUTES FOR REGULAR SESSION MEETING

Held on August 5, 2009

9535 E. Doubletree Ranch Road
Scottsdale, Arizona

Board Members

Douglas D. Lee, M.D., Chair
Paul M. Petelin Sr., M.D., Vice Chair
Amy J. Schneider, M.D., F.A.C.O.G., Secretary
Patricia R. J. Griffen, Member-at-Large
Andrea E. Ibáñez
Ram R. Krishna, M.D.
Todd A. Lefkowitz, M.D.
Lorraine L. Mackstaller, M.D.
William R. Martin III, M.D.
Dona Pardo, Ph.D., R.N.
Germaine Proulx

EXECUTIVE DIRECTOR'S REPORT

Lisa S. Wynn, Executive Director, thanked Lisa McGrane for being an invaluable member of the Agency's management team. Ms. Wynn reported that Ms. McGrane recently coordinated a fundraiser in which Board staff raised \$675 for Clinica Esperanza located in Honduras. Ms. Wynn stated that Board members wishing to donate to the clinic may contact her for further information or donate directly through the clinic's website. She also reported that the Agency contributed 400 hundred pounds of food to St. Mary's Food Bank in Phoenix. Ms. Wynn also thanked Marlene Young, Case Manager, for organizing staff's next effort to contribute to the community by working with a group that serves homeless youth in Phoenix. She stated that in the spirit of continued giving, Board staff will be collecting and knitting blankets to donate.

Ms. Wynn stated that she is pleased to report that there has been a steady decline in the number of open investigations. She informed the Board that staff, specifically Ms. McGrane and William Wolf, M.D., Chief Medical Consultant, have enhanced and expanded the Agency's list of outside medical consultants. Ms. Wynn reported that the Agency's management team has been cautiously optimistic that the Board's October 2009 Regular Session Meeting will be a one-day meeting. She proposed that the Board may hold its Offsite Meeting on that following day, rather than in September.

CHAIR'S REPORT

Dr. Lee requested that Board members consider holding a three-day meeting in October 2009 which would include the Board's Regular Session Meeting as well as its Offsite Meeting, in lieu of holding the Offsite Meeting in September. Dr. Mackstaller preferred the Board hold a one-day meeting in October and schedule the Offsite Meeting the following day; Ms. Ibáñez and Dr. Lefkowitz agreed. Dr. Krishna and Petelin spoke against holding a three-day meeting in October. Board members concurred their preference for holding a one day meeting in October and scheduling the Offsite Meeting the following day. Dr. Lee requested that members advise staff if they have topics they would like added to the Offsite Agenda.

Dr. Krishna reported that he recently attended a meeting at the Federation of State Medical Boards (FSMB) in which they proposed that the Board Chair and Executive Director authorize medical students to tour the Agency and witness Board staff's process to provide a better understanding of the Board's functions, specifically its Case Management Office. Ms. Wynn stated that she welcomed the opportunity for the Board to be proactive in reaching out to individuals beginning their medical career. She thanked Dr. Krishna for his thoughts and stated that Board staff will work to identify more ways to reach out to residency programs. Dr. Mackstaller reported that she recently appeared and spoke to a residency program and provided information regarding the Board's statutes.

APPROVAL OF 2010 MEETING DATES

Dr. Petelin questioned why the meetings were being moved from the first week to the second week. Chris Banyas, Board Operations Manager, reported that in the past the Board meetings traditionally were scheduled during the second week of every other month. She also noted that this change allows for the observance of scheduled holidays. Dr. Krishna questioned why Board

staff had been scheduling one-day meetings as opposed to the bimonthly two-day meetings. Ms. Wynn stated that the Board has an amazing staff that has been able to pull off one-day meetings due to the constant workflow. She stated that when Board staff receives feedback from the Board, it has been immediately implemented. She reported that Consent Agreement negotiations have been going extremely well, which has resulted in fewer cases being referred for Formal Hearing and fewer cases being scheduled for Formal Interviews. The Board expressed its appreciation for Board staff's hard work in completing investigations and scheduling them for final adjudication in a timely manner.

MOTION: Dr. Krishna moved to approve the 2010 meeting dates.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

APPROVAL FY 2008-2009 ANNUAL REPORT

MOTION: Dr. Krishna moved to approve the FY 2008-2009 Annual Report.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

APPROVAL OF FY 2009-2011 STRATEGIC PLAN

MOTION: Dr. Krishna moved to approve the FY 2009-2011 Strategic Plan.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

FY 2010 BUDGET

Ms. Wynn reported that the Legislature and Governor have been diligently working to pass a budget for Fiscal Year (FY) 2010. She stated that the most recent indication has been that the regulatory boards that are not funded by the State's General Fund will remain unaffected directly by budget cuts. However, Ms. Wynn stated that as a result, the Board has been affected by the Attorney General's Office budget cuts. Ms. Wynn reported that there will not be a direct impact on the Agency's operating funds, and stated that the Agency remains well under appropriations for 2009 and anticipates being as efficient and fiscally responsible in 2010. Ms. Wynn informed the Board that large purchases were made in 2009 to update the Agency's security and server. She stated that the Information Technology Department recently implemented a significant security upgrade for the Agency and she reported that online licensing is currently secure without any reported issues. Ms. Wynn informed the Board that the Agency recently received an expansive public records request from the Attorney General's Office regarding the budget reduction and fund sweep. She thanked Board Operations for working diligently to prepare the information to be released. Ms. Wynn requested that Board members submit any correspondence they had sent or received regarding the State's budget for inclusion in the public records request.

LEGAL ADVISOR'S REPORT

Jennifer Boucek, Assistant Attorney General, informed the Board that a recent appeal of an Advisory Letter issued at the Board's April 2009 meeting was dismissed in Superior Court. Ms. Boucek stated that the Board's issuance of Advisory Letters will be discussed at the Offsite Meeting which may be helpful in moving forward as appeals take up a significant amount of the agency and AG's office resources. She stated that delegation of duties to the Executive Director will also be discussed at the Offsite Meeting and that she will be working with Ms. McGrane to draft a Substantive Policy Statement regarding delegation of duties. She stated that the Substantive Policy Statement will provide the Executive Director with the authority to act on behalf of the Board if an informal settlement conference is held in connection with an appeal of a non-disciplinary CME Order or to modify the terms of the Order.

APPROVAL OF MINUTES

MOTION: Dr. Krishna moved to approve the June 3, 2009 Regular Session Meeting, including Executive Session; and the June 23, 2009 Emergency Teleconference Meeting.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

ADVISORY LETTERS

MOTION: Ms. Proulx moved to issue an Advisory Letter in item numbers 1, 5-9, 11-15, 17-18, 22-25, 28-30, 32, and 34-36.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-09-0129A	MICHAEL D. PURKIS, M.D.	24422	Issue an Advisory Letter for failure to follow up on abnormal labs. This was a one-time occurrence that does not rise to the level of discipline.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-09-0348A	JOHN D. DOUTHIT, M.D.	30569	Issue an Advisory Letter for action taken by another state. This matter does not rise to the level of discipline.

Dr. Pardo noted that this case stemmed from action taken by the Colorado Medical Board against Dr. Douthit's medical license. She pointed out that the Colorado Medical Board's action was considered discipline and she questioned why the Board's Staff Investigational Review Committee (SIRC) recommended non-disciplinary action. Patricia McSorley, Case Review Manager, informed the Board that while SIRC considers actions taken by other states, the Board is not bound by discipline issued by that state. Dr. Pardo questioned whether this case involved wrong-site surgery. Dr. Krishna stated that he did not find that the underlying patient care involved wrong-site surgery and pointed out that Dr. Douthit has no prior AMB or Colorado Board history.

MOTION: Dr. Krishna moved to issue an Advisory Letter for action taken by another state. This matter does not rise to the level of discipline.

SECONDED: Dr. Petelin

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-08-0701A	LIDIA E. EVERETT, M.D.	27580	Issue an Advisory Letter for failing to respond to the Board in a timely manner and for failure to provide medical records to a patient upon written request.
4.	MD-09-0221A	LIDIA E. EVERETT, M.D.	27580	Issue an Advisory Letter for failing to retain medical records as required by statute.

Dr. Pardo noted that both item numbers 3 and 4 involved medical records issues and questioned why SIRC recommended a non-disciplinary action. Board staff reported that the cases involved the closing of Dr. Everett's practice in which she attempted to notify patients and distribute their records accordingly; however, a few patient records were inadvertently shredded by an outside company hired to assist in closing the clinic. Dr. Petelin questioned whether Dr. Everett implemented a system for which patients may request their records within the next five years as statute requires that she maintain those records for at least six years. Vicki Johansen, Case Manager, acknowledged that the Board may be seeing more cases involving this physician's failure to provide patient records.

MOTION: Dr. Krishna moved to issue an Advisory Letter in item numbers 3 and 4.

SECONDED: Dr. Petelin

Dr. Pardo spoke against the motion and noted that several patients may not be able to obtain their medical records from Dr. Everett. Dr. Pardo questioned if this matter results in additional complaints, how many advisory letters would be issued before this reaches a disciplinary level. Dr. Krishna commented that discipline would be appropriate if similar complaints are received.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-09-0006A	BERNARDO MENDOZA, M.D.	33686	Issue an Advisory Letter for failing to evaluate a patient with syncope and thoracic aneurysm for abdominal aortic aneurysm. This matter does not rise to the level of discipline.
6.	MD-08-1270A	JEFFREY NEBELSIECK, M.D.	28595	Issue an Advisory Letter for inadequate documentation of physical examinations and vital signs. This matter does not rise to the level of discipline.

Dr. Petelin was recused from this case.

7.	MD-08-1106A	MALCOLM K. PIATT, M.D.	18729	Issue an Advisory Letter for inadequate documentation of discussion regarding the risks and benefits of PSA screening. The violation was a one-time occurrence that does not rise to the level of discipline.
8.	MD-09-0147A	OSCAR E. ANDRADE, M.D.	27758	Issue an Advisory Letter for failure to strongly insist that a patient with a rising PSA see an urologist. This matter does not rise to the level of discipline.
9.	MD-08-1472A	THOMAS E. MC CONAHAY, M.D.	33316	Issue an Advisory Letter for failure to notify a patient about an inconsistency between his reading of an x-ray and the radiologist's over-read. The violation was a one-time occurrence that does not rise to the level of discipline.
10.	MD-08-1315A	ROGER W. NUTT, M.D.	15072	Dismiss.

Dr. Krishna was recused from the case. Bhupendra Bhatheja, M.D., Medical Consultant, summarized that Dr. Nutt failed to appropriately monitor the patient's INR; however, several mitigating factors were identified by the medical consultant. Dr. Petelin noted that the patient's INR was in a therapeutic range when last seen by Dr. Nutt. Dr. Petelin found that Dr. Nutt acted appropriately and noted that hospital staff did not follow his recommendations for monitoring the patient. Dr. Petelin considered dismissing the case. Dr. Bhatheja pointed out that the medical consultant found Dr. Nutt wrote for weekly INRs without specifying the action to be taken once the results were available.

MOTION: Dr. Petelin moved for dismissal.

SECONDED: Dr. Mackstaller

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-06-0942A	ALAN K. OSUMI, M.D.	23063	Issue an Advisory Letter for failing to review the content of a report prior to signing it.

Attorney Ed Gaines spoke during the call to the public on behalf of Dr. Osumi. He stated that the plaintiff's expert witness in the underlying litigation found that the role of the physician proxy signing another physician's report is to make sure that the report makes sense. He stated that this was his fourth time in addressing the Board at call to the public on this matter and pointed out that there was no harm to the patient and requested that the Board dismiss the case.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-09-0158A	FRANCIS J. WOO, M.D.	10705	Issue an Advisory Letter for inadequate physical examination and inadequate follow up. This matter does not rise to the level of discipline.
13.	MD-09-0305A	JOHN M. KILIAN, M.D.	7954	Issue an Advisory Letter for prescribing Provigil to an immediate family member. The violation was a one-time occurrence that does not rise to the level of discipline.
14.	MD-09-0161A	MUHAMMAD A. ALAM, M.D.	29511	Issue an Advisory Letter for inadequate documentation. This matter does not rise to the level of discipline.
15.	MD-08-1521A	TIMOTHY M. MARSHALL, M.D.	22934	Issue an Advisory Letter for failure to admit a patient with new atrial fibrillation with rapid response and shortness of breath, and for inadequate medical records. This matter does not rise to the level of discipline.

Dr. Mackstaller was recused from this case. SS spoke during the call to the public. She stated that Dr. Marshall performed an echocardiogram on the patient and listed measurements of a young child, rather than the patient who was an adult female who weighed in excess of 400lbs. She stated that Dr. Marshall should have admitted the patient and should have maintained his medical records more adequately. DC also spoke during the call to the public. He stated that Dr. Marshall should not have given his wife, the patient, the option of admission or leaving the hospital when they relied upon his medical opinion as to how severe her condition was. He stated that Dr. Marshall should pay more attention to his patients.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-08-1379A	IAN L. GOLDMAN, M.D.	21363	Return for further investigation to obtain an opinion from a new medical consultant regarding whether the standard of care in October 2006 for performing sling procedures required a cystoscopy to be performed as well.

Dr. Goldman spoke during the call to the public. He provided the Board with a brief overview of his medical background and training. He stated that in this case, the sling placement he performed on the patient was uncomplicated and that the patient tolerated the procedure well. Dr. Goldman stated that there was no indication for performing a cystoscopy during the sling placement procedure, as it would have been unethical to do so. Attorney Stephen Myers also addressed the Board. He stated that the Board's medical consultant identified a deviation from the standard of care, but failed to provide literature to support that finding. Mr. Myers stated that medical literature indicates that cystoscopy should be performed during a surgeon's early experience with this technique. He asked that the Board dismiss the case.

Dr. Lee pulled this case for discussion and questioned whether the standard of care in October 2006, when this incident occurred, required a surgeon to perform cystoscopy during sling placement. Dr. Mackstaller stated that it appears that it was highly recommended that cystoscopy be performed during the sling placement. Dr. Lee commented that this seemed to be more of a debate in the medical community and expressed concern for holding Dr. Goldman to a standard of care that does not exist. Dr. Lee suggested sending the case back to investigations for a new OMC review. Dr. Pardo expressed concern that if the case is sent to a new OMC that the consultants would have two differing opinions. Dr. Lee stated that Dr. Goldman strongly maintained that this was not the standard of care of 2006 and in fairness to the physician, Dr. Lee stated that he believes this question needs to be answered. Dr. Lee recommended returning the case for further investigation to obtain an opinion from a new medical consultant regarding the standard of care; Dr. Krishna agreed with Dr. Lee's recommendation that the case be returned for the very specific purpose of determining whether this deviated from the standard of care in 2006.

MOTION: Dr. Lee moved to return the matter for further investigation to obtain an opinion from a new medical consultant regarding whether the standard of care in October 2006 for performing sling procedures required a cystoscopy to be performed as well.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
17.	MD-09-0149A	JEFFREY P. STEENO, M.D.	20862	Issue an Advisory Letter for failure to properly retain medical records and for failure to adequately educate a patient This was a one-time technical violation that does not rise to the level of discipline.
18.	MD-08-0999A	KARL J. HEKIMIAN, M.D.	24591	Issue an Advisory Letter for excessive delay in surgical debridement of a burn wound. This matter does not rise to the level of discipline.

SP spoke during the call to the public and stated that her husband was under the care of Dr. Hekimian for approximately four weeks. SP stated that Dr. Hekimian was not experienced or trained to handle severe burns, which her husband sustained that developed gangrene and caused significant pain. LP also addressed the Board during the call to the public and stated that the patient's surgery was much too aggressive and alleged that Dr. Hekimian failed to provide the patient with adequate pain medication.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
19.	MD-08-1357A	KULBHUSHAN K. SHARMA, M.D.	22286	Issue an Advisory Letter for performing liposuction in the presence of a ventral hernia. This matter does not rise to the level of discipline.

Dr. Sharma spoke during the call to the public and briefly summarized the case. He stated that after the second liposuction procedure that he performed on the patient, she developed a small swelling in the left lower quadrant of the abdomen. Dr. Sharma said his examination was negative for hernia, and he attempted to aspirate with an 18 gauge needle. Dr. Sharma pointed out that the patient's primary surgeon also examined her postoperatively and did not identify a hernia.

Dr. Mackstaller spoke in favor of dismissal as she noted that the patient's CAT scan performed prior to liposuction did not show a hernia. Dr. Petelin pointed out that the allegations involved Dr. Sharma's performance of liposuction in the face of a hernia and that he attempted to aspirate the hernia following the procedure. Dr. Krishna spoke in favor of issuing an Advisory Letter as he believed the matter should be tracked by the Board for any future occurrences; however, Dr. Krishna opined that the allegation of needle aspiration should be removed from the recommended Advisory Letter language.

MOTION: Dr. Krishna moved to issue an Advisory Letter for performing liposuction in the presence of a ventral hernia. This matter does not rise to the level of discipline.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
20.	MD-08-0842A	MICHAEL FEINSTEIN, M.D.	24799	Issue an Advisory Letter for failure to obtain baseline diffusion lung capacity and failure to obtain sufficiently frequent pulmonary function tests in a patient receiving Bleomycin. This matter does not rise to the level of discipline.

Dr. Bhatheja summarized that the medical consultant identified deviations from the standard of care as well as potential harm with several mitigating factors. Dr. Petelin questioned whether there is a specific protocol for monitoring patients on Bleomycin. Dr. Petelin stated that he did not want to send out the wrong message that may discourage oncologists from using toxic medications that are efficacious by issuing Dr. Feinstein an Advisory Letter. Dr. Bhatheja stated that in this case, the medical consultant found that Dr. Feinstein should have obtained baseline diffusion lung capacity and sufficiently frequent pulmonary function tests in a patient receiving Bleomycin.

MOTION: Dr. Petelin moved to issue an Advisory Letter for failure to obtain baseline diffusion lung capacity and failure to obtain sufficiently frequent pulmonary function tests in a patient receiving Bleomycin. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
21.	MD-09-0412A	RONALD D. SHIELL, M.D.	35156	Issue an Advisory Letter for permitting a PA to perform healthcare tasks without obtaining Board approval of the Notice of Supervision form. This was a minor technical violation that does not rise to the level of discipline.

Attorney Karen Owens spoke during the call to the public and addressed the Board regarding Advisory Letter item numbers 21 and 31 regarding Drs. Shiell and Ross. Ms. Owens stated that these cases did not involve quality of care concerns. She summarized that the cases involved supervision of a physician assistant (PA) that had not been approved by the Board. Ms. Owens stated that the physicians have diligently studied the Board's guidance with regard to PA supervision and that the failure to obtain Board approval was strictly an administrative error. Dr. Shiell addressed the Board and stated that his practice is based in California and that his administrative staff failed to inform him of the difference in Arizona statutes and California statutes. He stated that this has been a very valuable and humbling experience for him and he asked that the Board dismiss the case. Dr. Ross also addressed the Board and stated that she has been humbled by this experience. She pointed out that she has no prior Board history and that she accepts full responsibility for the administrative error. Dr. Ross stated that she has studied the Board's statutes and requested that the case be dismissed. Dr. Krishna pulled the case for discussion and stated that ignorance of the Board's statutes is not an excuse for violating the Medical Practice Act. Dr. Krishna spoke in favor of issuing the Advisory Letters to track the occurrence.

MOTION: Dr. Krishna moved to issue an Advisory Letter in item numbers 21 and 31.

SECONDED: Ms. Proulx

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
22.	MD-08-0611A	MOHAMMED Z. AKKAD, M.D.	33110	Issue an Advisory Letter for administering Integrilin in the setting of renal failure. This matter does not rise to the level of discipline.

Dr. Akkad spoke during the call to the public and provided the Board with a brief summary of the case. He stated that he appreciated the medical consultant's opinion of his use of Integrilin with this patient, and that he seldom uses Integrilin in his practice; however, he stated that this case involved a complex patient. Dr. Akkad stated that this was a successful intervention case and asked that the Board consider dismissal.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
23.	MD-08-1382A	LAURO AMEZCUA-PATINO, M.D.	17900	Issue an Advisory Letter for failing to provide written notice of termination of care. The violation was minor and does not rise to the level of discipline.
24.	MD-09-0441A	FRED E. HERZER, M.D.	16964	Issue an Advisory Letter for treating a patient without seeing the patient in person. This matter does not rise to the level of discipline.
25.	MD-09-0326A	BERTRAM I. MILSON, M.D.	27654	Issue an Advisory Letter for performing an incomplete history and exam and for failing to admit a patient after a witnessed syncopal event with reported cyanosis and provision of rescue breathing. This matter does not rise to the level of discipline.

Attorney DeeDee Holden spoke during the call to the public and read a statement issued by Dr. Milson. She read that he understands the seriousness of any matter before the Board and pointed out that he has no prior Board history. She further read that Dr. Milson believed if the case did not warrant dismissal, he hoped the Board would follow Board staff's recommendation in issuing him a non-disciplinary Advisory Letter.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
26.	MD-09-0653A	GERALD C. MOCZYNSKI, M.D.	9173	Issue an Advisory Letter for failing to disclose a malpractice settlement on his 2002 application for renewal of medical license. The violation was a one-time occurrence that does not rise to the level of discipline.

Dr. Pardo was recused from this case. Dr. Moczynski spoke during the call to the public and admitted that he incorrectly filled out his renewal application; however, he stated that the mistake was not intentional. He stated that he had instructed his insurance carrier to settle the matter in 1999 and therefore, he assumed that he had reported the settlement on his prior application form. Therefore, he answered no to the question on his application in 2002. Attorney Christine Cassetta also addressed the Board and stated that Dr. Moczynski's incorrect answer was inadvertent. She stated that A.R.S. §32-1401(27)(jj) requires that the physician knowingly made a false or misleading statement to the Board and that "knowingly" requires that he knew the answer was wrong at the time. She pointed out that the Board's Staff Investigational Review Committee (SIRC) struggled with the intent to make a false or misleading statement to the Board. Ms. Cassetta stated that it is incorrect for the Board to find that Dr. Moczynski knew he was making a false or misleading statement and asked that the Board consider dismissing the case.

Individually, Board members indicated that they know and have worked with Dr. Moczynski and Ms. Cassetta, but it would not affect their ability to be impartial in their review of this matter. Dr. Lee expressed that he was concerned with meeting the burden of knowingly making a false or misleading statement as he found there is no evidence to support that the statement was made "knowingly." Dr. Krishna opined that Dr. Moczynski should have answered "yes" on his application for renewal of licensure. Celina Shepherd, Case Manager, clarified that question #11 on the renewal application asks "since your last renewal, has a malpractice matter resulted in a settlement or judgement against you?" Dr. Petelin pointed out that there were subsequent opportunities for Dr. Moczynski to question why his malpractice case had not been investigated by the Board. Dr. Mackstaller noted that while Dr. Moczynski was not the individual who made the settlement effective, a malpractice settlement tends to stay on a physicians mind after the fact. Ms. Ibáñez noted that the Board struggled with determining the notion of intent. Dr. Mackstaller spoke in favor of issuing the Advisory Letter.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for failing to disclose a malpractice settlement on his 2002 application for renewal of medical license. The violation was a one-time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 6-yay, 1-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
27.	MD-09-0042A	MANI TEHRANCHI, M.D.	21210	Issue an Advisory Letter for failing to discuss the risks and benefits of the total abdominal hysterectomy preoperatively. This matter does not rise to the level of discipline.

Dr. Petelin stated that he was disturbed with Dr. Tehranchi's failure to identify the ureter in his operative report, or his attempt to identify the ureter. Dr. Ingrid Haas, M.D., Medical Consultant, stated that many gynecologists do not include in their operative notes their evaluation of the ureter. Dr. Petelin noted that the patient sustained a bilateral ureteral injury and that the patient's chart did not mention that this specific potential complication was discussed. Dr. Petelin recognized that this was not an uncommon injury and questioned how the Board could be proactive to inform its licensees how to prevent these injuries. Dr. Haas

stated that a statement may be issued to all members of the medical community regarding new devices and their drawbacks. Dr. Petelin noted that Dr. Tehranchi has no prior Board history and spoke in favor of issuing the Advisory Letter.

MOTION: Dr. Petelin moved to issue an Advisory Letter for failing to discuss the risks and benefits of the total abdominal hysterectomy preoperatively. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
28.	MD-06-0456A	MICHAEL R. ROLLINS, M.D.	30379	Issue an Advisory Letter for failure to recognize intravascular volume depletion and for failure to aggressively investigate the presence of free air on CT scan. This matter does not rise to the level of discipline.

Attorney Stephen Myers spoke during the call to the public and stated that this case has one of the most unusual Board procedural histories that he could recall. He provided the Board with a brief summary of the case and stated that Dr. Rollins was issued a disciplinary Letter of Reprimand in October 2007. He stated that the matter was appealed to Superior Court, who remanded the case back to the Board as the standard of care and deviation of such could not be determined. He further stated that on remand the medical consultant found a deviation pertaining to the second surgery, which he stated had been previously adjudicated and dismissed. Mr. Myers concluded that this matter does not warrant an Advisory Letter and he requested dismissal.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
29.	MD-09-0071A	ROBIN M. FLECK, M.D.	31062	Issue an Advisory Letter for failing to be available to manage potential post-procedure complications, and for inadequate medical records. This matter does not rise to the level of discipline.
30.	MD-09-0149B	SHOBHANA K. SHAH, M.D.	8077	Issue an Advisory Letter for failure to refer a skin biopsy with atypical elements to a specialized pathologist. The violation was a one-time occurrence that does not rise to the level of discipline.
31.	MD-09-0413A	HELEN R. ROSS, M.D.	34602	Issue an Advisory Letter for supervising a PA without receiving Board approval. The violation was a technical violation that does not rise to the level of discipline.
32.	MD-08-1532B	JOHN M. LEWIS, M.D.	7937	Issue an Advisory Letter for inadequate evaluation of a patient with a shoulder injury. This matter does not rise to the level of discipline.
33.	MD-07-0806A	GRAYSON H. WHEATLEY, M.D.	33217	Issue an Advisory Letter for inappropriate management of an ascending aortic aneurysm in a 43 year-old male with congestive heart failure due to severe aortic valvular regurgitation. This matter does not rise to the level of discipline.

Attorney Debora Hill spoke during the call to the public and provided a brief summary of the case involving a very high risk patient. She stated that the medical consultant suggested that Dr. Wheatley should have replaced the patient's ascending aorta; however, Ms. Hill stated that Dr. Wheatley believed at the time that the patient would not survive replacement surgery. Ms. Hill pointed out that the case did not stem from a patient complaint, and that the patient involved in this case is doing well and currently being followed by Dr. Wheatley. Ms. Hill noted that the medical consultant has a personal animosity to the founder of Arizona Heart Institute, Dr. Wheatley's employer, and is a direct competitor of Dr. Wheatley. She requested that if the Board believes that the case does not warrant dismissal, the Board should return the matter for further investigation to obtain a new medical consultant review.

William Wolf, M.D., Medical Consultant, summarized that the medical consultant found that Dr. Wheatley deviated from the standard of care in only one of the five patient charts reviewed for quality of care concerns. Dr. Wolf stated that the medical consultant found the procedure to be outdated, and the medical consultant opined that the patient's 33% ejection fraction was sufficient to proceed with a valve conduit procedure. Dr. Lee stated that in the interest of fairness to the physician, he suggested returning the case for further investigation to obtain a new medical consultant review. Dr. Krishna pointed out that returning cases for further investigation requires a significant amount of Board staff's resources. Dr. Krishna opined that since there were issues identified in only one of the five cases reviewed, the Board should respect the medical consultant's opinion; Dr. Petelin agreed and spoke in favor of issuing the Advisory Letter.

MOTION: Dr. Petelin moved to issue an Advisory Letter for inappropriate management of an ascending aortic aneurysm in a 43 year-old male with congestive heart failure due to severe aortic valvular regurgitation. This matter does not rise to the level of discipline.

SECONDED: Dr. Mackstaller

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
34.	MD-09-0219A	DANIEL T. REDFORD, M.D.	19186	Issue an Advisory Letter for failing to obtain intraoperative blood work and for failing to ensure adequate vascular access prior to emergency craniotomy in a six month-old child. This was an isolated incident and the matter does not rise to the level of discipline.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
35.	MD-07-0672A	ADAM R. KOELSCH, M.D.	31945	Issue an Advisory Letter for failing to establish appropriate boundaries with a patient and for inadequate medical records. This matter does not rise to the level of discipline.
36.	MD-08-1414A	DAVID P. LARSON, M.D.	34056	Issue an Advisory Letter for failing to urgently obtain an abdominal CT scan on a patient with signs of intraabdominal bleeding. This matter does not rise to the level of discipline.
37.	MD-08-1467A	MARK L. GRAMS, M.D.	11869	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

Dr. Wolf summarized that the medical consultant found no clear deviation from the standard of care but noted poor documentation on the part of Dr. Grams. Dr. Petelin recognized that this was a tragic and egregious oversight, and noted that Dr. Grams has a significant prior Board history. Therefore, he questioned why this matter does not rise to the level of discipline. Dr. Wolf stated that in light of Dr. Grams' prior Board history, the medical consultant found that he met the standard of care in this case, but poorly documented in the patient's chart. Dr. Wolf pointed out that Dr. Grams' prior Board history does not consist of medical records issues. Dr. Krishna noted that Dr. Grams was recently placed on a Practice Restriction and stated that there are systems in place to protect the public. Ms. Wynn clarified that this incident occurred prior to Dr. Grams' Practice Restriction, which currently prevents him from practicing any form of medicine. Dr. Krishna found the recommended Advisory Letter to be appropriate in this case.

MOTION: Dr. Krishna moved to issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

SECONDED: Dr. Mackstaller

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
38.	MD-09-0192A	ANDREW C. DAVEY, M.D.	26548	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

BW spoke during the call to the public and stated that Dr. Davey failed to diagnose a torn Achilles, which required multiple subsequent surgeries. BW stated that Dr. Davey is a good physician, but failed to provide him with adequate care. Dr. Bhatheja summarized that the medical consultant found that Dr. Davey met the standard of care in this case, but was critical of his documentation. Dr. Mackstaller opined that Dr. Davey acted appropriately for a primary care physician in a primary medical clinic, and spoke in favor of issuing the Advisory Letter for inadequate records.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION (CME)

Ms. Boucek proposed that the Board consider including new language in the CME Orders, in an effort to formalize the ED's authority pertaining to CME Orders. The proposed language reads as follows:

"If no CME courses are offered in the subject matter, or for the number of hours, specified in this Order, the Executive Director may modify its terms, provided the modifications are consistent with the remedial purpose of the original Order. In addition, the Executive Director has authority to act on behalf of the Board if an informal settlement conference is held in connection with an appeal of this Order."

Ms. Boucek stated that by including this language in the CME Orders, the parties are made aware that the ED has the authority to modify the CME Order without requiring the full Board's approval. Ms. Boucek instructed the Board to include the additional language in its motions for Advisory Letters with CME Orders in the current agenda items accordingly, and stated that the Board will later draft a Substantive Policy Statement formally providing the ED with that authority.

MOTION: Dr. Krishna moved to issue an Advisory Letter with Board staff pre-approved Category I non-disciplinary CME in item numbers 2 and 3, and to include the additional language as proposed in the CME Orders.

SECONDED: Ms. Ibáñez

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-1017A	RANDI M. GERMAINE, M.D.	21309	Issue an Advisory Letter for reintroducing methadone at a potentially excessive dose and for inadequate medical records and obtain 15-20 hours of Board staff

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
				pre-approved Category I CME in medical recordkeeping, to be completed within 6 months. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. This matter does not rise to the level of discipline.

HF spoke during the call to the public and stated that Dr. Germaine treated her husband for several months for the complaint of chest pain. She alleged that Dr. Germaine overprescribed medication to her husband as he has in the past to other patients. EN also addressed the Board and stated that Dr. Germaine ignored the patient's complaints of chest pain and told him that the medications were adequate. She stated that sending a physician back to school will not be of benefit when the physician is permitted to continue practicing irresponsibly. Dr. Petelin noted Dr. Germaine's prior Board history that included a requirement to obtain CME in prescribing controlled substances, which he stated is similar to issues involved in this case. Dr. Wolf stated that SIRC observed that it was not clear whether methadone was a contributing factor in the patient's death. He clarified that the primary deviation identified in this case was when the patient was restarted on methadone, Dr. Germaine did not start him back on a low dose. Dr. Pardo questioned whether methadone prescribing would have been included in the prescribing course in which Dr. Germaine had previously undergone. Carol Peairs, M.D., Medical Consultant, stated that prior to the mid-late 1990's, methadone began being used more for pain control and noted an increased number of overdoses. She stated that it is a topic of many CME courses; however, since it had a very unique pharmacology, not every opioid course would include it. Dr. Peairs stated that if Dr. Germaine is prescribing methadone, he should know what the initial prescribing dose should be. Board members noted that this incident occurred around the same time that he was reprimanded by the Board and required to obtain CME in prescribing controlled substances. Dr. Petelin spoke in favor of issuing the Advisory Letter with CME, and with the addition of the new language in the CME Order.

MOTION: Dr. Petelin moved to issue an Advisory Letter for reintroducing methadone at a potentially excessive dose and for inadequate medical records; obtain 15-20 hours of Board staff pre-approved Category I CME in medical recordkeeping, to be completed within six months, and include the additional language in the CME Order. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-08-0172A	MICHAEL J. TINGEY, M.D.	23746	Issue an Advisory Letter for inadequate medical records, for prescribing testosterone replacement without proper diagnostic confirmation or laboratory monitoring and for prescribing testosterone in supraphysiologic disease, and within 6 months complete 15-20 hours of Board staff pre-approved Category I CME in prescribing. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. This matter does not rise to the level of discipline.

CB spoke during the call to the public and stated that over a period of more than two years, Dr. Tingey prescribing several medications to her son without obtaining labs or any previous medical records. PB also addressed the Board and stated that Dr. Tingey prescribed over 85 different medications to his son over the course of 25 months without obtaining a complete medical history or a psychiatric evaluation prior to placing him on medication for schizophrenia. PB stated that Dr. Tingey allowed his son to take over thirteen different medications at once, with no concern for possible adverse effects.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-08-1177A	JOHANNES A. NURMAN, M.D.	9174	Issue an Advisory Letter for failing to perform an adequate evaluation of a patient with heart burn unresponsive to rabeprazole and within 6 months complete 10-15 hours of Board staff pre-approved Category I CME in evaluation of chest pain. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. The violation was a one-time occurrence that does not rise to the level of discipline.

REVIEW OF EXECUTIVE DIRECTOR (ED) DISMISSALS

MOTION: Dr. Krishna moved to uphold the ED dismissal in item numbers 2-4, and 7-10.

SECONDED: Ms. Proulx

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-1392A	MARK H. WILSON, M.D.	13278	Return for further investigation to obtain a new medical consultant review.

Dr. Petelin pulled this case for discussion and stated that he was concerned with Dr. Wilson's use of steroids in this patient, his failure to obtain surgical consultation when a new lesion appeared on the contralateral side, and the decision to proceed with a delayed primary closure. Dr. Bhatheja summarized that the medical consultant found that the lesion did not need to be cultured and found it adequate that Dr. Wilson observed the patient who was clinically well with no symptoms. Dr. Petelin requested that

the case return for further investigation to obtain a new medical consultant review to address his specific concerns. He stated that had MRSA been identified initially, aggressive intervention may have been successful.

MOTION: Dr. Petelin moved to return the matter for further investigation to obtain a new medical consultant review.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-09-0146A	PAUL N. DUONG, M.D.	30045	Uphold dismissal.
3.	MD-09-0397A	RICHARD F. PAVESE, M.D.	11109	Uphold dismissal.

SP spoke during the call to the public and stated that she felt severe pain while Dr. Pavese performed her liposuction procedure. She stated that she received more pain medication, but her vein had infiltrated and she was never placed in a compression garment. She asked that the Board help patients to never be treated with such a lack of competence from their physician.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-09-0383A	MARTIN B. AINBINDER, M.D.	33774	Uphold dismissal.
5.	MD-08-1007A	JEFFREY P. HOLDEN, M.D.	31563	Uphold dismissal.

KB spoke during the call to the public and stated that Dr. Holden provided her with medication to which she was allergic. She stated that Dr. Holden claims to have met with her prior to surgery and that she agreed to take the medication. KB denied ever meeting with Dr. Holden prior to surgery and stated that she never agreed to take medication that she was allergic to. DWB also addressed the Board and stated that Dr. Holden recklessly gave KB drugs she should not have taken and that she never met with him prior to surgery. Dr. Pardo commented that if KB told Dr. Holden she was allergic to the medication, but he gave it to her then there was a great potential for an allergic reaction. Dr. Peairs stated that the medical consultant found that Dr. Holden met the standard of care in this case. Dr. Peairs pointed out that patients will describe a reaction or response to a certain drug as an allergic reaction; however, she stated that it is up to the physician to determine whether or not that is a side effect of the medication or a true allergic reaction. Dr. Krishna spoke in favor of upholding the ED's dismissal.

MOTION: Dr. Krishna moved to uphold the dismissal.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-09-0384A	MICHAEL J. FITZMAURICE, M.D.	36511	Uphold dismissal and instruct Board staff to correct the typographical error in the medical consultant's report, paragraph three, by replacing "median nerve" with "ulnar nerve."

MG spoke during the call to the public. He stated that Dr. Fitzmaurice examined his arm, read MG's nerve test results, and recommended surgery. MG stated that his hand has been worse since the procedure and that when he reported his concern to Dr. Fitzmaurice, he was told it was normal and would heal. MG stated that the numbness in his hand that was minor prior to surgery is much worse postoperatively. Dr. Krishna spoke in favor of upholding the ED's dismissal, but identified a typographical error in the medical consultant's report, specifically in paragraph three. He instructed Board staff to correct the error by replacing "median nerve" with "ulnar nerve."

MOTION: Dr. Krishna moved to uphold the dismissal and instructed Board staff to correct the typographical error in the medical consultant's report, paragraph three, by replacing "median nerve" with "ulnar nerve."

SECONDED: Ms. Ibáñez

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	MD-08-1369A	HORST S. FILTZER, M.D.	35139	Uphold dismissal.

RS spoke during the call to the public. He alleged that Dr. Filtzer cut his jugular for a carotid endarterectomy. RS further stated that Dr. Filtzer has since retired after being dismissed from two hospitals following RS's operation. PB also addressed the Board and stated that had Dr. Filtzer informed RS of the risks of surgery, he never would have consented to have it performed.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
8.	MD-08-1369B	MICHELE M. HOLLEY, M.D.	36011	Uphold dismissal.

RS addressed the Board during the call to the public and stated that he awoke in the recovery room and walked out of the hospital with no attempt of the hospital staff to stop him. PB also spoke and alleged that Dr. Holley is not board certified and did not qualify to perform the procedure on RS.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-09-0393A	PATRICK KELLEDY, M.D.	24324	Uphold dismissal.

Dr. Petelin was recused from this case.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-09-0023A	KIANOUSH KIAN, M.D.	22618	Uphold dismissal.

PP spoke during the call to the public and stated that Dr. Kian treated her with negligence and gave her medication she was severely allergic to. She asked that the Board look into Dr. Kian's practice to prevent this from occurring in the future.

OTHER BUSINESS

MOTION: Ms. Ibáñez moved to accept the proposed Consent Agreement in Other Business item numbers 1, 3-6, 8-13, and 20.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-09-0356A	RINLY R. GECOSALA, M.D.	27229	Accept the proposed Consent Agreement for a Letter of Reprimand.
2.	MD-08-1020A	JOSHUA D. HOLLAND, M.D.	17551	Accept the proposed Consent Agreement for a Decree of Censure.

CS spoke during the call to the public on behalf of the patient. She stated that Dr. Holland inappropriately prescribed excessive narcotics to a depressed patient with whom he had an inappropriate sexual relationship. She stated that the patient's death at the age of 36 was premature, tragic, and unnecessary. Dr. Petelin pulled this case for discussion and review of the CME courses that Dr. Holland underwent. Dr. Lee noted that there was an investigation regarding the allegations outside the quality of care issues that involved an inappropriate sexual relationship for which Board staff did not substantiate. Dr. Petelin spoke in favor of accepting the proposed Consent Agreement.

MOTION: Dr. Petelin moved to accept the proposed Consent Agreement for a Decree of Censure.

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. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-08-1290A	DUAN C. COPELAND, M.D.	35699	Accept the proposed Consent Agreement for Stayed Revocation with Five Years MAP Participation. Dr. Copeland shall immediately obtain a Board approved psychotherapist. After twelve months, Dr. Copeland may petition the Executive Director to terminate the psychotherapist requirement. Dr. Copeland's MAP participation is retroactive to February 12, 2009.
4.	MD-08-1416A	MARY L. CALLERAME, M.D.	15830	Accept proposed Consent Agreement for a Letter of Reprimand and One Year Probation to obtain 15-20 hours of Board staff pre-approved Category I CME in the management of pulmonary diseases, and 15-20 hours of CME in prescribing. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. The Probation shall terminate upon successful completion of the CME.
5.	MD-08-1337A	BARRY M. LITTLEJOHN, M.D.	37577	Accept the proposed Consent Agreement for a Letter of Reprimand.
6.	MD-08-1489A	BENNY CELNIKER, M.D.	3729	Accept the proposed Consent Agreement for a Decree of Censure with One Year Probation to obtain 10 hours of Board staff pre-approved Category I CME in the management of postmenopausal bleeding, to be completed within six months. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. The Probation shall terminate upon successful completion of the CME.
7.	MD-08-0993A	ROSS E. LEVATTER, M.D.	18681	Accept the proposed Consent Agreement for a Letter of Reprimand.

Anita Shepherd, Case Manager, summarized that Dr. Levatter entered into a plea agreement for attempted money laundering, a class four felony. Ms. Shepherd pointed out that Dr. Levatter has no prior Board history and that this case did not involve quality of care issues. Dr. Petelin questioned whether the Board is bound by the legal actions taken when considering the ethics and morality of the physician involved in the Board's attempt to protect the public. Ms. Boucek stated that there is nothing that precludes the Board from taking action based upon the felony conviction. Dr. Krishna noted that in his response to the Board, through his attorney, Dr. Levatter recognizes that his conduct was aberrant and that he may have a sexual addiction. Ms. Boucek stated that the Board may open a new complaint based upon Dr. Levatter's admissions in his response. Dr. Krishna spoke in favor of accepting the proposed consent agreement and opening a new case to investigate to evaluate Dr. Levatter to determine whether he does have a sexual addiction.

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

SECONDED: Dr. Krishna

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Dr. Pardo noted that Dr. Levatter's response also indicated that he hoped to be evaluated and, if necessary, undergo treatment at Behavioral Medicine Institute (BMI) in Atlanta. She instructed Board staff to inquire as to whether Dr. Levatter had undergone an evaluation at BMI in the interim.

MOTION: Dr. Krishna moved to open a new investigation regarding Dr. Levatter's admission in his response letter to the Board in which he indicated that he may have a sexual addiction.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
8.	MD-09-0120A	GRANT T. FANKHAUSER, M.D.	37503	Accept the proposed Consent Agreement for a Letter of Reprimand with Five Years MAP Probation. Dr. Fankhauser's MAP participation is retroactive to April 17, 2009.
9.	MD-07-0340A	KENNETH J. TOLMAN, M.D.	36900	Accept the proposed Consent Agreement for Surrender of License.
10.	MD-09-0371A	JACK L. SCHAFER, M.D.	17574	Accept the proposed Consent Agreement for a Letter of Reprimand.
11.	MD-08-0967A MD-09-0159A	PAUL D. DLUGIE, M.D.	28012	Accept the proposed Consent Agreement for a Decree of Censure and One Year Probation to obtain 20 hours of Board staff pre-approved Category I CME in a comprehensive opiate prescribing and pain management course, 15-20 hours of CME in the management of electrolyte disturbances, and 15-20 hours of CME in a comprehensive billing course. The CME hours shall be in addition to the hours required for the biennial renewal of medical license. The Probation shall terminate upon successful completion of the CME.

RW addressed the Board during the call to the public and read a letter on behalf of his daughter, the complainant. He read that Dr. Dlugie harmed the complainant's husband with improper treatment of his symptoms by failing to monitor his blood work.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-08-1255A	RONALD L. CHRIST, M.D.	6644	Accept the proposed Consent Agreement for a Letter of Reprimand.
13.	MD-09-0279A	MARTIN S. CHATTMAN, M.D.	7618	Accept the proposed Consent Agreement for a Decree of Censure with a 10 Year Practice Restriction prohibiting Dr. Chattman from prescribing, administering or dispensing any controlled substances.

CL spoke during the call to the public on behalf of her mother, the patient involved in this case. She stated that her mother was a patient of Dr. Chattman's for nearly ten years and that he overprescribed narcotics and sedatives. She asked that the Board protect the public and revoke Dr. Chattman's license as she holds him solely responsible for her mother's untimely demise.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
14.	MD-07-0874A	WARREN L. MOODY, M.D.	31152	Accept the amended Consent Agreement to lift Dr. Moody's February 4, 2009 Consent Agreement for Practice Restriction and place him on Two Years Probation.

Kathleen Muller, Physician Health Program, summarized that Dr. Moody previously entered into a Consent Agreement for a Decree of Censure and Practice Restriction, prohibiting him from practicing and requiring that he undergo an evaluation. Pursuant to his Consent Agreement, Dr. Moody underwent an evaluation and was diagnosed with alcohol abuse, full remission. Dr. Moody's evaluators recommended that he undergo random urine and hair tests for a period of no less than two years. Board staff requested that the Board accept the amended Consent Agreement to lift Dr. Moody's February 2009 Consent Agreement for Practice Restriction and place him on Two Years Probation.

MOTION: Dr. Krishna moved to accept the amended Consent Agreement to lift Dr. Moody's February 4, 2009 Consent Agreement for Practice Restriction and place him on two Years Probation.

SECONDED: Ms. Proulx

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
15.	MD-05-0884A	HARSHAD S. PATEL, M.D.	22757	Modify the Board Order by lifting the work hour restriction, and by allowing him to

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
				see female patients without a chaperone except while performing examinations of female patients that involve breast, pelvic, genital or rectal examinations.

Erinn Downey, Case Manager, summarized that Dr. Patel requested that the Board modify his Order for Practice Restriction by lifting his work hour restriction, and by allowing him to see female patients without a chaperone except while performing examinations of female patients that involve breast, pelvic, genital or rectal examinations.

MOTION: Dr. Krishna moved to modify the Board Order by lifting the work hour restriction, and by allowing him to see female patients without a chaperone except while performing examinations of female patients that involve breast, pelvic, genital or rectal examinations.

SECONDED: Ms. Ibáñez

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-91-0238A	DANILO H. SOTELO-GARZA, M.D.	13879	Deny the request for termination of the Interim Order.

Ms. Muller summarized that as a result of a number of quality of care issues involving surgeries performed by Dr. Sotelo-Garza, he entered into a stipulation agreement with the Board that prohibited him from practicing until receiving Board approval. She stated that Dr. Sotelo-Garza has requested that termination of his Order as he currently holds an unrestricted license in Mexico. Ms. Muller informed the Board that in 2008-2009, Dr. Sotelo-Garza completed Phases I and II of PACE, who opined that he would need to achieve board certification prior to returning to surgery in Arizona, due to his history of surgical complications. Ms. Muller reported that Dr. Sotelo-Garza was offered a Consent Agreement allowing him to return to practice, but prohibiting him from performing any surgery. Dr. Sotelo-Garza declined the offer and proposed that the Board allow him to practice in an office practice and perform first assist in the operating room.

MOTION: Dr. Krishna moved for a final Board Order granting Dr. Sotelo-Garza to practice in an office practice setting and may perform first assist in surgery.

SECONDED: Dr. Petelin

Ms. Muller pointed out that Dr. Sotelo-Garza's Order was an Interim Order and not a final Board Order. Board members questioned how to proceed. Ms. Boucek informed the Board that it may continue the Interim Order by modifying its terms, or convert the Order to a final Board Order by identifying it as the final order in this matter.

VOTE: 3-yay, 3-nay, 2-abstain, 0-recuse, 3-absent.

MOTION FAILED.

MOTION: Dr. Lee moved to deny the request for termination of the Interim Order.

SECONDED: Dr. Mackstaller

VOTE: 6-yay, 0-nay, 2-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
17.	MD-98-0861A	LIEM S. OEI, M.D.	16139	Termination of Board Order
18.	MD-02-0716A	MARK P. SALERNO, M.D.	25300	Termination of Board Order

MOTION: Dr. Krishna moved to terminate the Board Order in item numbers 17 and 18.

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
19.	MD-08-0650A	BENNY CELNIKER, M.D.	3729	Issue an Advisory Letter for inadequate medical records as this was one-time occurrence that does not rise to the level of discipline, and terminate the Order for Practice Limitation.

Dr. Haas provided the Board with a brief overview of the case. She stated that during the call to the public at the Board's February 2009, the complainant alleged that Dr. Celniker had a significant tremor during the patient's surgery. She stated that the Board expressed concern and requested that Dr. Celniker undergo an evaluation. The evaluation concluded that the tremor was minor and does not affect his performance of surgery. Board staff requested that the Board issue an Advisory Letter and terminate the Practice Limitation.

MOTION: Dr. Krishna moved to issue Dr. Celniker an Advisory Letter for inadequate medical records as this was a one-time occurrence that does not rise to the level of discipline, and terminate the Order for Practice Limitation.

SECONDED: Dr. Mackstaller

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
20.	MD-08-0324A	AARON C. BORNSTEIN, M.D.	14650	Accept the proposed Consent Agreement for a Decree of Censure.

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

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-0258A	ROBBI L. BORJESON, M.D.	24093	Adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order for Revocation.

Board members indicated that they received and reviewed the administrative record of the Formal Hearing in this matter. Dr. Borjeson was not present during the Board's consideration of the case. Anne Froedge, Assistant Attorney General, summarized that the ALJ found that Dr. Borjeson engaged in numerous acts of unprofessional conduct involving deviations from the standard of care as well as medical records and dishonesty type violations. Ms. Froedge requested that the Board adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order in its entirety. Dr. Krishna questioned whether Dr. Borjeson received proper notification of the Formal Hearing. Ms. Froedge reported that Dr. Borjeson received certified copies of the notice of hearing at her last known address that she provided to the Board.

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

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

MOTION: Dr. Krishna moved to adopt the ALJ's recommended Order for Revocation.

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. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-08-0748A	CARLIN G. BARTSCHI, M.D.	9497	Adopt and modify the ALJ's recommended Findings of Fact, Conclusions of Law and Order for Revocation to assess Formal Hearing costs to the physician, to be paid within 90 days.

Board members indicated that they received and reviewed the administrative record of the Formal Hearing in this matter. Dr. Bartschi was not present during the Board's consideration of the case. Ms. Froedge summarized that Dr. Bartschi is currently serving a 55-month prison sentence for felony convictions involving tax evasion and mail fraud. She stated that the ALJ recommended that Dr. Bartschi's license be Revoked, but the Revocation is stayed until such time that Dr. Bartschi could complete a course in ethics. Ms. Froedge requested that the Board modify the ALJ's recommended Order to assess Formal Hearing costs to the physician.

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

SECONDED: Ms. Proulx

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Dr. Krishna spoke against staying the Revocation and spoke in favor of recovering the Board's hearing costs. Dr. Pardo spoke against staying the Revocation. Christopher Munns, Assistant Attorney General, recommended that the Board reconsider the ALJ's recommended Conclusions of Law to reject numbers 6 and 7, if the Board concludes to Revoke Dr. Bartschi's license.

MOTION: Dr. Pardo moved to reconsider the ALJ's Conclusions of Law numbers 6 and 7.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board discussed the ALJ's recommendation for staying the Revocation until such time that Dr. Bartschi can complete a CME course in ethics. Dr. Krishna noted that Dr. Bartschi may reapply for licensure should the Board modify the ALJ's recommendation and Revoke his license. Dr. Petelin recommended revoking Dr. Bartschi's license rather than staying the revocation with conditions. The Board concluded that based on the circumstances of the case, Dr. Bartschi's license shall be revoked.

MOTION: Dr. Petelin moved to adopt and modify the ALJ's recommended Conclusions of Law by rejecting Conclusions of Law numbers 6 and 7.

SECONDED: Dr. Krishna

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

MOTION: Dr. Krishna moved to modify the ALJ's recommended Order for Revocation to assess Formal Hearing costs to the physician, to be paid within 90 days.

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. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

LEGAL MATTERS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-0277A	SUDEEP S. PUNIA, M.D.	20224	Deny the motion for rehearing or review.

Dr. Lefkowitz was recused from this case. Attorney Paul Giancola was present on behalf of Dr. Punia. He stated that certain Findings of Fact and one Conclusion of Law are not supported by the evidence and should be reconsidered by the Board. Mr. Giancola stated that the case should be limited to Findings of Fact numbers 1-13 as Dr. Punia admitted that he did not properly fill out his notice of supervision form, that his PA used improper prescription forms, and that the PA did not use her own DEA number when writing prescriptions. Mr. Giancola pointed out that the PA recently received an Advisory Letter for the very same conduct; therefore, he requested that the Board consider issuing Dr. Punia an Advisory Letter as there are multiple mitigating factors involved and this was not an egregious offense. Dr. Petelin stated that he found the arguments for rehearing both interesting and enlightening. However, Dr. Petelin stated that he found Ms. Boucek's arguments for denial of the rehearing most compelling in that this was not newly discovered evidence, but evidence that was not filed in a timely manner. Dr. Petelin spoke in favor of denying the motion for rehearing or review.

MOTION: Dr. Petelin moved to deny the motion for rehearing or review.

SECONDED: Dr. Krishna

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	This matter was pulled from the Agenda.			
3.	MD-07-0364A	TERRY L. SIMPSON, M.D.	21784	Accept and modify the proposed technical amendment and issue an Advisory Letter for improperly performing a colorectal anastomosis and within six months complete 15-20 hours of Board staff pre-approved Category I CME in GI stapling techniques and related complications. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure. This is a minor or technical error that does not rise to the level of discipline.

Attorneys Debra Hill and Stephen Myers were present on behalf of Dr. Simpson. Dr. Myers stated that at its June 2009 meeting, the Board issued Dr. Simpson an Advisory Letter based upon the SIRC recommendation that included a very specific fact "...for inadvertently performing a colovaginal anastomosis instead of the intended colorectal anastomosis..." Mr. Myers requested that the Board consider amending the Advisory Letter language to read "...for incorrectly performing a colorectal anastomosis..." and that the language in the CME Order be changed accordingly. Mr. Myers stated that he reviewed the Board's April and June of 2009 Board meeting minutes and noted that the Advisory Letters issued after a Formal Interview contained very specific language as the parties had the opportunity to present for a Formal Interview. However, Mr. Myers stated that the cases in which the Board accepted the SIRC recommendation for an Advisory Letter included very non-specific language. He requested that the Board accept the SIRC recommendation for an Advisory and only read that the anastomosis was incorrectly performed. Mr. Myers concluded that the public, the patient, the Board, and the medical profession are far better served by an Advisory Letter that is not so factually specific.

Ms. Boucek clarified that this case was heard by the Board during its Regular Session Meeting as the Board voted to issue a non-disciplinary CME Order to Dr. Simpson, which had been appealed. She stated that the appeal of the CME Order gave rise to a statutory right to an informal settlement conference before the Board. Dr. Simpson's representatives, as an offer of settlement of the CME appeal, were proposing a technical amendment to certain language which was included in both the Advisory Letter and the CME Order. She affirmed that Advisory Letters are not appealable actions.

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

SECONDED: Dr. Petelin

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board entered into Executive Session at 10:40 a.m.

The Board returned to Open Session at 10:51 a.m.

No deliberations or discussions were made during Executive Session.

Dr. Krishna questioned whether the appeal for the CME Order would be vacated if the Board accepts the technical amendment. Mr. Myers replied yes.

MOTION: Dr. Petelin moved to accept and modify the proposed technical amendment and issue an Advisory Letter for improperly performing a colorectal anastomosis and within six months complete 15-20 hours of Board staff pre-approved Category I CME in GI stapling techniques and related complications. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure. This is a minor or technical error that does not rise to the level of discipline.

SECONDED: Dr. Krishna

Dr. Pardo spoke against the motion. She stated that this case, in her opinion, is similar to wrong-site surgery and rises to the level of discipline.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Petelin, and Ms. Proulx. The following Board members voted against the motion: Dr. Pardo. The following Board members were absent: Ms. Griffen, Dr. Martin and Dr. Schneider.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-08-0187A	ALBERT E. CARLOTTI, M.D.	29728	The Board took no action.
5.	MD-08-0187B	MICHELLE L. CABRET-CARLOTTI, M.D.	30196	The Board took no action.

SP addressed the Board during the call to the public regarding the Drs. Carlotti. She stated that she discovered additional areas in her medical records in which the Drs. Carlotti made modifications. PG also spoke during the call to the public and stated that the physicians failed to adequately follow her following her surgery; however, after she informed them that she was filing a complaint with the Board, she received flowers from Dr. Albert Carlotti.

Ms. Boucek informed the Board that this matter was agendized due to a disagreement regarding compliance with the subpoena in response to a directive of the Board to examine the physicians' computers. She stated that as of that morning, both parties reached an agreement on a system going forward for imaging the hard drives. Ms. Boucek also reported that a non-disclosure agreement was set in place with the expert prohibiting him from disclosing any of the information received to anyone other than the Board, and requiring the expert to destroy any documents or information obtained that is not responsive to the subpoena.

Attorney Veronica Manolio addressed the Board on behalf of her clients, Drs. Carlotti. She disagreed that there was a disagreement and stated that her clients have complied with the Board's requests and intend to comply with the subpoena. She explained to the Board that the complainant involved in the matters has made several complaints with the Board and that her clients have been subject to a personal attack on several levels. Dr. Michelle Cabret-Carlotti also addressed the Board and expressed that this experience has been an unbelievable form of torture for her and her husband, and that the process has been unfair and unjust. Dr. Cabret-Carlotti stated that they have never denied the Board access to their computer drives; however, she said that the system proposed seemed archaic, which she stated was their only resistance to the imaging.

Ms. Boucek and Ms. Manolio agreed that the process would be completed within fourteen days, and that both parties would pay the costs of their own computer consultants. Ms. Boucek withdrew her request for permission of subpoena enforcement action; therefore, the Board took no action on the matters.

FORMAL INTERVIEWS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-1363A	JAMES J. DEL GIORNO, M.D.	23788	Issue an Advisory Letter for poor communication with other providers in a complex patient. This matter does not rise to the level of discipline.

Dr. Petelin was recused from this case. Dr. Del Giorno was present without legal counsel. Dr. Bhatheja summarized that Dr. Del Giorno cleared a patient for elective gall bladder surgery earlier than six months of antiplatelet surgery without stratifications and without instructions to the surgeon regarding management of the antiplatelet therapy. Dr. Del Giorno stated that he clearly documented in his surgical clearance report that the patient should continue on his current medication therapy. Dr. Del Giorno further stated that continuance of the medication therapy was discussed with the patient in his office. Dr. Mackstaller found that Dr. Del Giorno did not clearly mention the antiplatelet therapy in his surgical clearance report. Dr. Del Giorno opined that the surgeon who discontinued the patient's anticoagulants probably created a risk for the patient to suffer complications postoperatively. He admitted that it would have been beneficial for him to have further elaborated in the clearance note. Dr. Krishna noted that Dr. Del Giorno did document that the patient should continue the anticoagulants; however, Dr. Krishna found that Dr. Del Giorno failed to document the medication therapy under his recommendations for surgery clearance where he stated that the patient was stable from a cardiac standpoint for his procedure. Dr. Mackstaller found that Dr. Del Giorno engaged in unprofessional conduct by deviating from the standard of care.

MOTION: Dr. Mackstaller moved for a finding of unprofessional conduct in violation of 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: Dr. Krishna

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

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

SECONDED: Dr. Krishna

Dr. Mackstaller opined that it was Dr. Del Giorno's responsibility to adequately communicate to the surgeon that the patient's antiplatelet therapy should be continued. However, she commented that had Dr. Del Giorno acted differently, the outcome may not have changed. Dr. Lee commented that his primary concern in this case is the miscommunication. He stated that in preparing to undergo major gall bladder surgery, the physicians involved in this patient's care should have communicated better regarding the complexity of the patient. However, Dr. Lee did not believe that this case rises to the level of discipline. Dr. Krishna agreed and stated that the patient's surgeon was also at fault and he did not believe that this case rises to the level of discipline. Dr. Mackstaller withdrew her motion for discipline and recommended issuing an Advisory Letter for poor communication with other providers in a complex patient.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for poor communication with other providers in a complex patient. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, and Ms. Proulx. The following Board member was recused: Dr. Petelin. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
2.	MD-09-0318A	BALDASSARRE STEA, M.D.	17065	Issue an Advisory Letter for a minor technical violation as remedial action has been taken.

Dr. Mackstaller was recused from this case. Dr. Scott Tannehill spoke during the call to the public in support of Dr. Stea. He stated that Dr. Stea is an icon of the community in Tucson, Arizona, and a cornerstone for the treatment of cancer patients. Dr. Tannehill stated that Dr. Stea is a magnet for the toughest cancer cases due to his skill and experience. Dr. Stea was present with Attorney Phil Grant. Dr. Wolf summarized that Dr. Stea failed to ensure delivering of radiation therapy to the prescribed area over the course of the patient's treatment. Dr. Wolf stated that the patient underwent 22 treatments prior to Dr. Stea's discovery that he was treating the wrong area. Dr. Stea pointed out that he has no prior Board history and expressed that he regrets what occurred; however, he stated that the patient was immediately informed of the situation and did not suffer any actual or long-term harm. Dr. Stea informed the Board that an action plan was implemented to prevent a similar occurrence.

Dr. Krishna noted that when Dr. Stea initially saw the patient, he received a PET scan that was done with poor quality. Dr. Stea stated that retrospectively, he would have obtained a repeat PET scan prior to initiating treatment. Dr. Stea explained that a PET scan was obtained approximately four to five weeks after completion of the chemoradiation regimen and was clear. Dr. Lee questioned whether a time-out was performed during any of the patient's treatment sessions. Dr. Stea stated that time-outs were not standard protocol when this occurred, but has been implemented into their current routine. In closing, Mr. Grant stated that the violation was a one-time occurrence that was repeated automatically by the computer. He stated that the technical violation is within the confines of issuing Dr. Stea an Advisory Letter, which he stated would be appropriate for this case. Mr. Grant pointed out that Dr. Stea is actively involved in the action plan to prevent future occurrences and has the ability to educate upcoming residents of his experience. Dr. Krishna found that this matter does not rise to the level of discipline and suggested issuing an Advisory Letter for a minor technical violation, and he noted that remedial action has been taken.

MOTION: Dr. Krishna moved to issue an Advisory Letter for a minor technical violation and remedial action has been taken.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Pardo, Dr. Petelin, and Ms. Proulx. The following Board member was recused: Dr. Mackstaller. The following Board members were absent: Ms. Griffen, Dr. Martin, and Dr. Schneider.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
3.	This matter was moved to Other Business item #20.			

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
4.	MD-09-0260A	WILLIAM M. SMITH, M.D.	11497	Return the matter for further investigation to provide the physician with the Board's investigative materials.

Dr. Smith was present without legal counsel. Dr. Peairs summarized that Dr. Smith allegedly prescribed excessive amounts of phentermine to patient TB. Dr. Peairs stated that a pharmacy survey indicated that Dr. Smith prescribed approximately 28 prescriptions for phentermine to TB which resulted in a total of 1,855 tablets of phentermine over the course of ten months. The Board's medical consultant found that Dr. Smith deviated from the standard of care in his treatment of TB by inappropriately prescribing phentermine to a patient with a history of substance abuse. Dr. Smith requested that the Board postpone the formal interview to allow him the opportunity to obtain and review the Board's findings, specifically the prescriptions from the pharmacy to compare with the scripts contained in his copy of TB's medical record. Dr. Smith explained that he believed some prescriptions may have been forged. He also stated that he would like the patient, who did not file the complaint, to be questioned by the Board prior to final adjudication of his case.

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

SECONDED: Dr. Lee

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board entered into Executive Session at 2:33 p.m.

The Board returned to Open Session at 2:39 p.m.

No deliberations or discussions were made during Executive Session.

Dr. Smith clarified that he would like to obtain the prescriptions from the pharmacy to compare signatures with the scripts he wrote and that are contained in TB's medical record.

MOTION: Dr. Krishna moved to return the matter for further investigation to provide Dr. Smith with the Board's investigative materials.

SECONDED: Dr. Lee

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Ms. Boucek reiterated to Dr. Smith that he has the right to retain legal counsel to represent him before the Board. She informed him that in lieu of the Formal Interview, he has the option of a full evidentiary hearing, in which he may present witnesses.

Dr. Lee noted that the materials contained a physician termination of patient care form that was signed by the nurse practitioner. Also included was the patient's response to the nurse, addressing her as a medical doctor. The Board found this to be misleading to the patient and requested that this be referred to the Arizona Nursing Board for review of the nurse practitioner's actions.

The meeting adjourned at 4:25 p.m.



Lisa S. Wynn, Executive Director