



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258
Home Page: <http://www.azmd.gov>

Telephone (480) 551-2700 • Fax (480) 551-2705 • In-State Toll Free (877) 255-2212

DRAFT MINUTES FOR SPECIAL TELECONFERENCE MEETING

Held on Tuesday, October 20, 2009
9545 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

CALL TO ORDER

The meeting was called to order at 5:20 p.m.

ROLL CALL

The following Board members participated telephonically: Ms. Griffen, Ms. Ibanez, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board member was absent: Dr. Mackstaller.

CALL TO THE PUBLIC

There were no individuals present to speak during the call to the public.

I. Consideration of proposed stipulation in the case of Tucson Women's Center; et al., v. Arizona Medical Board, et al.

Carrie Brennan, Assistant Attorney General, Solicitor General's Office, presented this matter to the Board. She reported that in September 2009, two lawsuits were filed that challenged the constitutionality of various newly enacted statutory provisions that restrict abortion. Ms. Brennan stated that one lawsuit was filed in State Court by Planned Parenthood Arizona, and the second lawsuit was filed in Federal District Court by Tucson Women's Center. She summarized that one provision involved an informed consent counseling session and a 24-hour reflection period that requires a woman seeking an abortion to receive information and a counseling session with a physician 24 hours prior to the scheduled abortion. She stated that the payment provision would prohibit physicians from receiving payment for the service provided to a patient who inquired about an abortion or scheduled an abortion until expiration of the 24-hour reflection period. Ms. Brennan stated the plaintiffs believe that the payment provision was too vague as it could prevent other providers from receiving payments when a patient casually inquired about an abortion.

Ms. Brennan informed the Board that when the Federal District and State Court lawsuits were filed, the plaintiffs filed motions for preliminary injunction, requesting that the Courts enjoin the Arizona Medical Board and the Arizona Board of Osteopathic Examiners while the lawsuits are pending. She reported that the Federal District Court Judge opined that the plaintiff would not ultimately succeed on their claim and declined to institute the preliminary injunction. The Federal District Court held that the Board's narrow interpretation of the provision was most likely correct, but certified the question to the State Supreme Court to interpret the language and decide whether the payment provision would only be triggered when the 24-hour reflection period began after the informed consent counseling session had been provided.

Ms. Brennan stated that the plaintiffs have the opportunity to appeal the Court's adverse ruling, but that it may not be in their best interest as an injunction was issued in the State Court lawsuit. However, Ms. Brennan further stated that there is a possibility that the State Court ruling may be overturned, which by that time, the plaintiffs in the Federal District Court case will have lost their opportunity to appeal. Ms. Brennan stated that the plaintiff's in the Federal District Court lawsuit have proposed a stipulation, indicative of the Board's agreement to interpret the payment provision in accordance with the plaintiff's argument

that the payment provision is not triggered unless and until the informed consent counseling session is given and the 24-hour reflection period has begun.

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

SECONDED: Dr. Petelin

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

MOTION PASSED.

The Board went into Executive Session for legal advice at 5:30 p.m.

The Board returned to Open Session at 5:52 p.m.

No deliberations or discussions were made during Executive Session.

Dr. Martin spoke against signing the proposed stipulation and recommended that the Board develop guidelines to disseminate to its licensees regarding the statutory provisions.

MOTION: Dr. Martin moved to reject the proposed stipulation.

SECONDED: Dr. Krishna

Dr. Schneider spoke against the motion and stated that the proposed stipulation provided clarification for healthcare providers. Dr. Krishna spoke in favor of the motion and stated that he agreed with Dr. Martin's recommendation for the Board to develop guidelines, which may be similar to the proposed stipulation's interpretation of the provisions. Dr. Schneider questioned the time frame in which it would take for Board staff to draft guidelines and when they would become effective. Dr. Martin questioned whether the Board is required to undergo the rulemaking process in order to produce the guidelines for its licensees. Lisa Wynn, Executive Director, stated that Board staff could draft guidelines heavily reflective of the Board's interpretation of the statutory provision, without having to go through the rulemaking process. She further stated that the Board could hold a special meeting for the Board to formally accept and/or modify the draft, or the matter could be considered at the Board's December 2009 Regular Session Meeting.

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

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

MOTION PASSED.

MOTION: Dr. Martin moved to direct Board staff to draft guidelines, in an expedited manner, regarding the statutory provisions, and to return the matter to the Board in a timely manner.

SECONDED: Ms. Ibanez

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

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

MOTION PASSED.

Meeting adjourned at 6:05 p.m.



Lisa S. Wynn, Executive Director