



## Arizona Medical Board

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### FINAL MINUTES FOR BOARD OFFSITE PLANNING MEETING

Held on Saturday, July 26, 2014

At Chaparral Suites Scottsdale, 5001 N. Scottsdale Rd., Kiva Room,  
Scottsdale, AZ 85258

#### Board Members

Gordi S. Khera, M.D., F.A.C.C., Chair  
Richard T. Perry, M.D., Vice-Chair  
Ram R. Krishna, M.D., Secretary  
Jodi A. Bain, Esq.  
Marc D. Berg, M.D.  
Donna S. Brister  
R. Screven Farmer, M.D.  
Robert E. Fromm, M.D.  
Paul S. Gerding, Esq.  
James M. Gillard, M.S., M.D., F.A.C.E.P., F.A.A.E.M.  
Edward G. Paul, M.D.  
Wanda J. Salter, R.N.

#### GENERAL BUSINESS

##### A. CALL TO ORDER

Dr. Khera called the meeting to order at 9:15 a.m.

##### B. ROLL CALL

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

##### ALSO PRESENT

Marc Harris, Assistant Attorney General (AAG), Anne Froedge, AAG, C. Lloyd Vest, II, Executive Director, Pat McSorley, Deputy Director, William Wolf, M.D., Chief Medical Consultant, Carol Peairs, M.D., Internal Medical Consultant, Anita Shepherd, Investigations Office Manager, Celina Shepherd, Licensing Office Manager, Evangeline Webster, Support Services Office Manager, James Gentile, Chief Information Officer, Mary Bober, Board Operations Manager, Dr. Michel Sucher, of Greenberg & Sucher, Kathleen Muller, Physician Health Program (PHP), Danielle Steger, PHP, Amanda Schwabe, Board Coordinator, and Andrea Cisneros, Staff Investigational Review Committee (SIRC) Coordinator.

##### C. CALL TO THE PUBLIC

Shirley Brener spoke during the call to the public regarding her previously dismissed complaints. Diane McGrath and Michael McKinney addressed the Board regarding Dr. Osborne's recent license revocation.

##### D. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING PHYSICIAN HEALTH PROGRAM (PHP)

Dr. Sucher provided the Board with a history and overview of the Board's PHP and the Monitored Aftercare Program including how individuals are enrolled in the program, as well as the assessment and monitoring of its participants and the fees involved. The Board commended Greenberg & Sucher, PC, for their work. Board members stated that they found the information to be clear and concise, and that it is helpful for the Board when adjudicating cases.

## **E. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING CALL TO PUBLIC PROCESS**

Board members discussed the Board's current process for Call to the Public held at its regular session meetings. Mr. Vest stated that statute provides members of the public the right to attend and observe the meetings, and that the right to speak is discretionary by the Board. Mr. Vest proposed that the Board restructure its Call to the Public held at regular meetings in order to interact with the speaker and in a manner that will allow the Board to receive the information at the time that the case is considered.

**MOTION: Dr. Krishna moved for the formation of a Subcommittee consisting of Dr. Perry, Ms. Brister and Ms. Salter for the purposes of reviewing the Board's Call to the Public process.**

**SECOND: Dr. Khera**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.**

**MOTION PASSED.**

## **F. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING INVESTIGATION/ADJUDICATION PROCESS A-Z**

Mr. Vest provided the Board with a summary regarding the Agency's investigation/adjudication process. AAG Harris presented to the Board the various legal services provided to the Board by the Attorney General's Office as well as the Solicitor General's Office.

Board members were informed regarding the Agency's Staff Investigational Review Committee (SIRC) and questioned whether the SIRC concept should be placed in the form of statute or rule. AAG Harris informed the Board that SIRC is not mentioned in statute or rule. AAG Harris advised the Board that they may want to consider defining the role of SIRC in statute and then promulgate rules related to thereto.

The Board discussed the Health Insurance Portability and Accountability Act (HIPAA) and how the Board's investigations are affected by the patient confidentiality required by HIPAA. Mr. Vest informed the Board that medical boards are exempt from HIPAA. Board members also discussed how actions by other state boards are reported to the Board for review of the licensed individuals involved in the cases.

The Board instructed Board staff to further research the issue of a hospitals duty to report. Board members discussed that there may be hospitals that are not reporting matters to the Board involving physicians that are being requested by the hospital to undergo assessments as a result of a hospital investigation.

Board members discussed as well the process involved in offering physicians a Consent Agreement when SIRC has recommended discipline. Board staff explained that physicians at times decline the offer to enter into a consent agreement because they disagree with the recommendation. Board staff stated that negotiations are made regarding the findings set out in the proposed consent agreement, but that the recommended level of discipline is not negotiable.

Finally, the Board discussed the Formal Hearing component in cases and instructed Board staff to report to the Board at its August 2014 Regular Meeting the average cost of a Formal Hearing.

## **G. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING REVIEW OF APPEAL OF EXECUTIVE DIRECTOR (ED) DISMISSALS**

Mr. Vest summarized for the Board the current process for considering the appeal of an ED dismissal. He stated that currently, when an appeal is received by staff, the matter is placed on the Board's next regular meeting agenda for consideration. Mr. Vest informed the Board that rule sets out certain criteria that shall be met in order for the appeal to be considered by the Board. Board members discussed the proposed process for the appeals, noting that SIRC will be reviewing the appeals that are filed timely in order to determine whether it meets at least one of the criteria set out in A.A.C. R4-16-510.

Dr. Khera expressed concern regarding the public's perception of this policy change, and stated that complainants have the right to have their case reviewed by the full Board. Board members recognized that the Board recently modified the processing of an ED dismissal, noting that all cases dismissed by the ED are currently referred to the Board for review. Board members spoke in favor of the proposal since the cases have already been reviewed by the Board at the time it was dismissed.

**MOTION: Dr. Khera moved to approve the proposed process for Review of Appeal of ED Dismissals.**

**SECOND: Dr. Farmer**

**VOTE: 8-yay, 0-nay, 1-abstain, 0-recuse, 3-absent.  
MOTION PASSED.**

#### **H. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING SYSTEM ERROR VS. PHYSICIAN ERROR**

AAG Harris presented this matter to the Board. Board members discussed the involvement of healthcare and stated that matters involving patient harm require review and appropriate adjudication. Dr. Khera proposed that the Board implement a process/policy to address the issue of physician error versus system error in an effort to make healthcare individuals accountable for patient harm. Board members recognized that some matters may involve persons that are not licensed healthcare professionals.

The Board concluded that matters involving patient harm require the identification of the individuals involved in the patient's care, and the reporting of those individuals to their respective regulatory agency. In matters involving unlicensed individuals, it was discussed to refer those persons to the proper authorities for practicing medicine without a license to do so.

#### **I. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING BOARD AUTHORITY COMPARED TO BOARD STAFF AUTHORITY**

AAG Harris stated it is the role of Board staff to present to the Board information for consideration and to determine the appropriate action to take in any particular matter. It was discussed that in the past, the staff interpreted statute to reference the Board or its staff when it referred to the Board. Mr. Vest pointed out that Board staff is infrequently referenced in statute/rule, and stated that going forward the Board will have more involvement and oversight as it continues to gain more understanding of its role versus the role of Board staff.

#### **J. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING GL SOLUTIONS – INITIAL ONLINE APPLICATION FOR MDs**

Mr. Vest presented this matter to the Board and recommended that the Board approve staff's proposal to move forward with initial online applications for physicians. He explained that the benefits of implementing the online applications allows the applicant to access the application in the Board's system at all times and that an automated email system will be in place to notify the applicants each time another step in the process is complete.

The Board noted that there have been some challenges with the Agency's vendor, and staff reported that the project may take up to 12 months to complete. Board members discussed the utilization of a uniform application provided by the Federation of State Medical Boards (FSMB), which would be available on the Board's website once the Agency rolls out the online application process. The Board also discussed allowing its applicants to use the FSMB's Federation Credentials Verification Service (FCVS) during the application process. It was noted that the Board had previously approved the utilization of the FCVS by its applicants.

**MOTION: Dr. Farmer moved to use the Board's current application and to place it online as expeditiously as possible.**

**SECOND: Ms. Bain**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.**

**MOTION PASSED.**

The Board instructed staff to look into the utilization of the uniform application and place the matter on a future agenda for further Board discussion.

#### **K. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING OFF-MONTH TELECONFERENCES TO ADDRESS LICENSE APPLICATIONS**

The Board discussed holding off-month teleconferences to address license application matters only. Board staff reported that credentials and applicants have expressed concern that the Board meets every other month, causing applicants to wait for two months for the Board to consider their application. Mr. Vest stated that stakeholders have suggested that the Board meet telephonically every month to review and consider license applications.

Board members noted that the applications presented to the Board are those in which additional review is required based on answers provided by the applicant. Several Board members spoke in favor of maintaining the Board's current practice of considering these applications at its bi-monthly meetings. The Board tabled this matter and suggested returning to this discussion at a later date for further consideration.

## **L. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RENEWAL REVIEW 2009-2011 CRITERIA**

Ms. C. Shepherd provided the Board with an update regarding the lookback in relation to the renewal review. She reported that the Licensing Office staff will be conducting a lookback of renewals from 2009-2011 and that applications in which the licensee answered in the affirmative to a professional conduct question will be presented to the Board at its regular meetings. Ms. C. Shepherd added that the purpose of the review is to determine whether licenses were appropriately renewed at the time.

## **M. LICENSING LOOKBACK UPDATE**

Ms. McSorley reported that Greater Arizona Credentialing has entered into a contract with the Board to perform the licensing lookback. Dr. Khera instructed Board staff to further review whether recent legislation required a deadline for the imitation of this process to determine whether the Board is compliant, and to report back to the Board at its regular scheduled meeting.

## **N. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING FINGERPRINTING**

Ms. McSorley informed the Board that licensees filing initial license applications or renewal applications will be subject to fingerprinting, and that the Agency has a deadline of September 2, 2014 to be in compliance with this requirement. She reported that the staff has taken steps to implement a fingerprinting policy, and attended a full day of training at the Department of Public Safety. Ms. McSorley added that the staff has met with the Arizona Board of Nursing and obtained their policies and helpful tips on how to implement this new process.

## **O. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RULES AND RULE MAKING**

### **a. JOINT LEGISLATION AND RULES (JLR) COMMITTEE UPDATE**

Ms. Bain presented this matter to the Board. She explained that each rule article applicable to the Board undergoes review by the Governor's Regulatory Review Council (GRRC). She stated that after the five year review is performed, it is custom for an agency to have the ability to submit to GRRC an open docket to request modifications or revisions of that particular rule article. Ms. Bain stated that the Board is currently working on articles 1, 2, and 5 and that because of recent legislative changes a new docket may need to be opened. Board members noted that when statutory changes are made, certain rules may no longer be valid and become outdated. Dr. Khera stated that those wishing to participate in the JLR Committee are to inform Ms. Bain.

## **P. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING REMOVAL OF PRESCRIBING GUIDELINES FROM WEBSITE**

Dr. Peairs provided the Board with a PowerPoint Presentation regarding the issue of opioid prescribing for chronic pain. She stated that the current guidelines on the Board's website are outdated and should be replaced with a reference to the FSMB's current policy for opioid prescribing. Board members spoke in favor of updating the information, and indicated that physicians who continue to practice pain management need to be informed without fear of being disciplined by the Board. The Board recommended including in the reference a disclaimer indicating that the document clearly does not apply to the hospital, operative, or emergency room settings, and that it does not preclude the Board from making a determination of standard of care in the process of adjudicating a Board investigation on its own merit.

**MOTION: Dr. Khera moved to approve the reference for physicians on the use of opioid analgesics in the treatment of chronic pain in the office setting. It was further moved that a disclaimer be included in the reference indicating that the document is not intended to address opioid prescribing in the emergency department setting, and that the Board intends the document to be a useful tool for physicians treating chronic pain and does not replace or constrain the Board's determination of standard of care.**

**SECOND: Dr. Krishna**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.**

**MOTION PASSED.**

- a. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM (CSPMP) NOTICES**
- b. BOARD OUTREACH**

Mr. Vest informed the Board that there are currently 26% of licensees that are registered with the CSPMP. He explained that statute requires licensed health care providers to register with the program. Mr. Vest stated that notices are being sent out to all licensees informing them of the requirement.

**Q. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING VIRTUAL DESKTOP INTERFACE (VDI)**

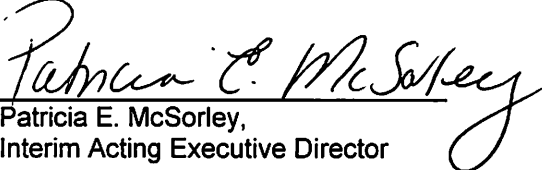
Mr. Gentile presented a step by step introduction into the Board's new VDI and demonstrated how the new system will work for reviewing board meeting materials.

**R. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING PROPOSING FUTURE PROJECTS TO STAFF**

Dr. Khera pointed out recent issues involving the challenges relating to board member reimbursement. Ms. Webster informed the Board that in an effort to be fully compliant with statute and rule changes have been made to the reimbursement process. Board members discussed the issue of hiring additional staff. It was noted that at its previous meeting, the Board unanimously authorized the ED to hire additional staff as necessary and within the available budget. Mr. Vest stated that staff has reached out to the Department of Administration for approval of hiring additional staff, but have not been successful in receiving a response. Mr. Vest added that the Board may want to consider proposing a change in legislation to increase the ceiling on the base amount of staff approved by the State. Mr. Vest stated that stakeholders have been contacted and have indicated their support in the Board's effort to achieve full staffing at the Agency. The Board tabled this matter and instructed staff to place the item on a future agenda for further discussion.

The meeting adjourned at 2:56 p.m.



  
Patricia E. McSorley,  
Interim Acting Executive Director