



## 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

### FINAL MINUTES FOR SPECIAL TELECONFERENCE MEETING Held on Wednesday, November 19, 2014 9545 E. Doubletree Ranch Road • Scottsdale, Arizona

#### *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 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 Paul, M.D.

Wanda J. Salter, RN

#### GENERAL BUSINESS

##### A. CALL TO ORDER

Dr. Khera called the meeting to order at 6:00 p.m.

##### B. ROLL CALL

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

##### ALSO PRESENT

Christopher Munns, Assistant Attorney General ("AAG"), Solicitor General's Office, participated telephonically. Present among Board staff: Patricia McSorley, Interim Acting Executive Director; Carrie Smith, AAG; Anne Froedge, AAG; William Wolf, M.D., Chief Medical Consultant; Carol J. Peairs, M.D., Internal Medical Consultant; Anita Shepherd, Investigations Office Manager; Celina Shepherd, Licensing Office Manager; Rachel Shepherd, Investigator; Danielle Steger, Investigator, Physician Health Program ("PHP"); Tony Cimino, Investigator; Marlene Young, Investigator; Mary Bober, Board Operations Manager; and Andrea Cisneros, Staff Investigational Review Committee ("SIRC") Coordinator.

##### C. CALL TO THE PUBLIC

No individuals addressed the Board during the call to the public.

#### LEGAL MATTERS

##### D. APPEAL OF EXECUTIVE DIRECTOR DECISION TO REFER CASES TO FORMAL HEARING AND CONSIDERATION AND POSSIBLE ACTION REGARDING SUMMARY SUSPENSION OR RESTRICTION

1. MD-13-0480A, MD-13-0883A and MD-14-0266A, SUSAN B. FLEMING, M.D., LIC. #14840

Dr. Fleming was not present during the Board's consideration of this matter. Attorney Steve Myers participated telephonically on behalf of Dr. Fleming.

**MOTION:** Dr. Khera moved to enter into executive session pursuant to A.R.S. § 38-431.03(A)(2).

**SECOND:** Dr. Farmer

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

**MOTION PASSED.**

The Board entered into Executive Session at 6:03 p.m.

The Board returned to Open Session at 6:05 p.m.

No legal action was taken by the Board during Executive Session.

The Board was informed that Dr. Fleming entered into an Interim Consent Agreement for a Practice Restriction while the cases are pending Formal Hearing.

**MOTION:** Dr. Fromm moved to accept the Interim Consent Agreement for Practice Restriction.

**SECOND:** Dr. Khera

**ROLL CALL VOTE:** Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Gillard, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.

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

**MOTION PASSED.**

## **CONSENT AGENDA**

### **E. LICENSE APPLICATIONS**

#### **i. APPROVE OR DENY LICENSE APPLICATION**

**MOTION:** Dr. Khera moved to approve the license application in items 1, 2, and 3.

**SECOND:** Dr. Farmer

**ROLL CALL VOTE:** Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Gillard, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.

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

**MOTION PASSED.**

1. MD-14-1517A, JERRY K. KUBENA, M.D., LIC. #N/A

**RESOLUTION:** Approve the license application.

2. MD-14-1521A, ANDREW L. TIEVSKY, M.D., LIC. #N/A

**RESOLUTION:** Approve the license application.

3. MD-14-1526A, TIMOTHY L. FENG, M.D., LIC. #N/A

**RESOLUTION:** Approve the license application.

4. MD-14-1379A, HANS H. SHUHAIBER, M.D., LIC. #N/A

Board members noted that Dr. Shuhaiber was initially denied a California medical license, and was granted a license by the California Medical Board three years later. Ms. Bain noted that the physician submitted a narrative of his understanding as to why the license was initially denied, but questioned whether the Board should obtain information from the California Medical Board relating to the initial license denial.

Ms. R. Shepherd informed the Board that staff received the license denial letter, but the California Medical Board was not able to provide additional information. AAG Smith informed the Board that it is the Board's discretion as to whether they believe the information provided in the application is sufficient to vote on the matter, or whether additional information is needed to adjudicate the matter.

Ms. McSorley stated that it is not unusual to have an applicant reapply at a later time and be granted a medical license. It was noted that Dr. Shuhaiber did not fill out the license application correctly initially, but did the second time he applied. Dr. Gillard noted that Dr. Shuhaiber currently holds medical licenses in California, Florida, Illinois,

Michigan, and Washington with no reported discipline. Dr. Gillard stated that after review of the material in the case, he was in favor of granting the license.

**MOTION: Dr. Gillard moved to approve the license application.**  
**SECOND: Ms. Bain**

Dr. Khera expressed concern with the issues that were identified during Dr. Shuhaiber's residency, and questioned the physician's competency. Ms. R. Shepherd reported that Dr. Shuhaiber successfully completed residency training in medical genetics in New York in June of 2010. Ms. McSorley informed the Board that if there are concerns regarding competency, the Board has the option of requesting that the physician complete a competency evaluation.

Dr. Khera stated that there is not enough information in the file for the Board to make a decision regarding the license application at the current time. Several Board members noted that Dr. Shuhaiber was evaluated by the directors of both of his residency programs, which identified competency concerns.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Berg, Dr. Fromm, and Dr. Gillard. The following Board members voted against the motion: Ms. Bain, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.**

**VOTE: 2-yay, 7-nay, 0-abstain, 0-recuse, 3-absent.**

**MOTION FAILED.**

**MOTION: Dr. Farmer moved to return the case for further investigation as to the reason or the initial denial of licensure by the California Medical Board, and to obtain current recommendations as well as further investigate practice references.**

**SECOND: Dr. Khera**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Gillard, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.**

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

**MOTION PASSED.**

**5. MD-14-0596A, TIMOTHY M. MCRAE, M.D., LIC. #N/A**

Dr. Gillard noted that Dr. McRae holds multiple state licenses with no history of discipline. He spoke in favor of granting the license. Board members noted that Dr. McRae reported a previous malpractice lawsuit that resulted in dismissal without payment.

**MOTION: Dr. Gillard moved to approve the license application.**

**SECOND: Ms. Bain**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Gillard, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.**

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

**MOTION PASSED.**

**6. MD-14-0234A, ADAM A. MORGAN, M.D., LIC. #N/A**

The Board observed that this was a teleradiology case involving an incorrect interpretation of a CAT scan that resulted in a sequence of events that led to the patient's death. Dr. Khera commented that had this matter occurred in Arizona, it likely would have resulted in discipline. Dr. Khera added that he is not convinced that the physician's conduct has been corrected or resolved. Dr. Farmer stated that he shared Dr. Khera's concerns, adding that the Board's Medical Consultant ("MC") who reviewed

the case did not provide any guidance as to how often a responsible radiologist would make a similar mistake.

Dr. Wolf reported that the MC had pointed out that Dr. Morgan performed an over-read of the CAT scan, and that the original reviewer reported the same findings. Dr. Wolf stated that Dr. Morgan may have relied too much on the original teleradiologist's interpretation. The Board noted that Dr. Morgan currently holds medical licenses in 24 other states with no history of discipline. Board members expressed their concern with granting the license, given the patient harm involved in the case.

**MOTION: Dr. Fromm moved to grant the license.**  
**SECOND: Dr. Gillard**

Dr. Fromm stated that this was a single episode and the physician was not the primary reader of the film. Dr. Khera spoke against the motion and stated he was bothered by Dr. Morgan's failure to read the film more accurately.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Berg, Dr. Fromm, and Dr. Gillard. The following Board members voted against the motion: Ms. Bain, Ms. Brister, Mr. Gerding, Dr. Khera, and Ms. Salter. The following Board member abstained: Dr. Farmer. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.**  
**VOTE: 3-yay, 5-nay, 1-abstain, 0-recuse, 3-absent.**  
**MOTION FAILED.**

**MOTION: Dr. Gillard moved to return the case for further investigation to obtain a new quality of care review by an MC in radiology.**

Board members discussed returning the case to have a new MC review the case from a radiology standpoint and comment on whether this was a significant radiology miss. Dr. Gillard requested that the matter be reviewed by SIRC after obtaining the new MC's review and summary. The Board also discussed that if this episode suggests that the physician is not competent, an evaluation may be warranted. The Board considered referring the case to a trauma surgeon MC for comment. It was determined that Board staff should determine the appropriate MC to review the matter for the Board. Dr. Farmer added that the applicant should be questioned as to what checks and balances and over-reads are being conducted on his teleradiology films.

Dr. Gillard withdrew his motion.

**MOTION: Dr. Gillard to return the case for further investigation for a second review by an MC to be determined by Board staff.**

**SECOND: Dr. Khera**

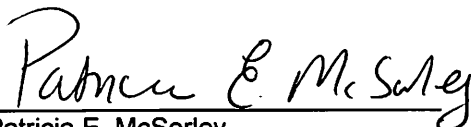
**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Bain, Dr. Berg, Ms. Brister, Dr. Farmer, Dr. Fromm, Mr. Gerding, Dr. Gillard, Dr. Khera, and Ms. Salter. The following Board members were absent: Dr. Krishna, Dr. Paul, and Dr. Perry.**

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

**MOTION PASSED.**

The meeting adjourned at 6:49 p.m.



  
Patricia E. McSorley  
Interim Acting Executive Director