



## Arizona Medical Board

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### FINAL MINUTES FOR BOARD OFFSITE PLANNING MEETING

Held on Friday, September 18, 2015

At Hilton Tucson East, 7600 E. Broadway, Salon A  
Tucson, AZ 85710

#### *Board Members*

Richard T. Perry, M.D., Chair

James M. Gillard, M.S., M.D., F.A.C.E.P., F.A.A.E.M., Vice-Chair

Jodi A. Bain, Esq., Secretary

Marc D. Berg, M.D.

Donna S. Brister

Teresa L. Connolly, D.N.P., R.N., N.E.A.-B.C.

R. Screven Farmer, M.D.

Gary R. Figge, M.D.

Robert E. Fromm, M.D., M.P.H.

Lois E. Krahn, M.D.

Edward G. Paul, M.D.

Wanda J. Salter, RN

### GENERAL BUSINESS

#### A. CALL TO ORDER

Dr. Gillard called the meeting to order at 9:10 a.m.

#### B. ROLL CALL

Roll call was taken and the following Board members were present: Ms. Brister, Ms. Bain, Dr. Gillard, Dr. Berg, Ms. Salter, Dr. Figge, Ms. Connelly, Dr. Fromm, Dr. Farmer, Dr. Paul came in at 9:30 a.m.

The following Board members were absent: Dr. Perry, Dr. Krahn

#### ALSO PRESENT

Present among Board staff include: Pat McSorley, Executive Director, Kristina Fredericksen, Deputy Director, Rachel Shepherd, Licensing Investigator, Anita Shepherd, Investigations Manager, Twana Fairbourn, Licensing Manager, Evangeline Webster, Support Services Manager, Amanda Schwabe, Board Coordinator, James Gentile, Chief Information Officer, Andrea Cauthon, Staff Investigational Review Committee Coordinator Sean Charles, Systems Administrator, Dr. William Wolf, Chief Medical Consultant, Mary Bober, Board Operations Manager, AAG Carrie Smith, AAG Anne Froedje,

#### C. CALL TO THE PUBLIC – 9:00 a.m.

Dr. Riemke Brakema, Dr. Mitch Halter, Dr. Steven Rayle, and Ms. Tennen addressed the Board regarding concerns relating to costs associated with participation in the Board's Physician Health Program ("PHP").

Dr. Brakema addressed the Board and gave his account of his participation in the PHP. Dr. Brakema told the Board of the negative financial consequences he suffered as a result of his participation in PHP: his malpractice insurance doubled, healthcare insurance would not reimburse his billing, and he was not permitted to sit for recertification.

Ms. Tennen appeared before the Board and indicated she is not a medical professional nor a substance abuser; however she knows of licensees who have been negatively impacted by participating in PHP. She stated

that the program exists to protect the public and to help physicians, but it seems that the primary concern of the Board's monitors is their own financial gain.

Dr. Halter spoke about his experience with the PHP. Dr. Halter opined that while the PHP is a good program, the costs are excessive, particularly for physicians unable to work. Dr. Halter spoke of the need for a mechanism to assist non-practicing licensees with the \$1200 a month monitoring fees.

Dr. Rayle indicated his main complaint is the predatory fees charge by the PHP monitors, and stated that the financial strain is a stressor and a poses a risk factor for relapse. He stated that the high cost of participation in the PHP robs him from having a balanced life

#### **D. BOARD MEMBER TRAINING**

- Investigations Process

Board staff presented the following training material to the Board:

- Complaint Intake Process
- Investigation of Complaints
- Medical Consultant Reviews

AAG Smith presented the following training material to the Board:

- SIRC
- Notification of Proposed Action
- Options Available to the Board regarding Disciplinary and Non-Disciplinary Actions
- Public and Non-Public Orders
- Roles of AAG's in Relation to the Board

- Formal Interviews

AAG's Froedge and Smith presented the Formal Interview training material to the Board, which included the following:

- Role of the Board in Conducting Formal Interviews
- The process of Board deliberations and motion making at the conclusion of a Formal Interview.

Break for lunch at 12:08 p.m.

Returned 1:06 p.m.

Roll call was taken and the following Board members were present: Ms. Brister, Ms. Bain, Dr. Gillard, Dr. Berg, Ms. Salter, Dr. Figge, Ms. Connelly, Dr. Fromm, Dr. Farmer, Dr. Paul

The following Board members were absent: Dr Perry and Dr. Krahn

Dr. Gillard welcomed new Board Member, Dr. Connelly.

- Formal Hearings

AAG Froedge suggested postponing the Formal Hearing training to another time and asked the Board if they had any specific questions for her.

- Licensing

Board staff presented the following material to the Board:

- License Applications
- Application Investigations
- Open Meeting Law

AAG Smith presented Open Meeting Law Materials to the Board, which included the following:

- Conflict of Interest
- Quorum Concerns
- Proper Board Member Communication Outside of a Legally Noticed Board Meeting
- Call to the Public

## **E. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING LEGISLATIVE AGENDA**

Ms. McSorley informed the Board that the following topics may be considered by the Legislature in the upcoming 2016 legislative session:

- Compact License and Multi-State Practice
- Three Year Renewal Cycle
- Telemedicine
- Temporary Licensure and Emergency Medical Licensure

Ms. McSorley requested Board Member input on any additional legislative items of concern to the Board.

## **F. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RULEMAKING**

- Update on Public Comments Received on Proposed Licensing Rules (Article 2)

Ms. McSorley reported that the Agency was in the process of receiving public comments on the proposed amended licensing rules for Article 2. She reported that the first stakeholder meeting was attended by many of those who had attended earlier meetings at the Board when the Board was seeking input on the licensing process. The stakeholders were pleased with the current proposed rules and requested a minor modification to permit an applicant's request for waiver to be heard at the Board meeting immediately following receipt of the request for waiver. Dr. Gillard asked if the Board had received a waiver from the rulemaking moratorium. Ms. McSorley responded that a waiver had been received from the Governor's rulemaking moratorium and that the Agency also had a legislative exemption to proceed with rulemaking process for Article 2.

- Update on Rulemaking Process for Article 5 (Executive Director Duties) Revisions

Ms. Bain informed the Board that in December of 2014 the Agency submitted a five year review of the rules contained in Article 5 to the Governor's Regulatory Rule Commission (GRRC) and that generally within a year of submitting a five year review the Agency needs to determine whether further revision of the rules is necessary, or if any proposed rule changes contained in the five year review should proceed through the rulemaking process.

## **G. EXECUTIVE DIRECTOR'S REPORT**

- Update on the Agency's Priorities and Progress

Ms. McSorley stated she provided the Board with a calendar for upcoming meetings and deadlines. She informed the Board that she had prepared memoranda for their review addressing the staff's priorities.

## **H. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING MEDICAL BOARD REGULATION OF EXPERT WITNESSES**

The Board discussed its role in addressing allegations that a physician expert provided false expert testimony in a legal proceeding. Dr. Farmer stated that he had been involved in the drafting of legislation that required medical experts to meet specific qualifications before they could testify and this has had a positive impact on the testimony provided by experts in malpractice cases. The Board members discussed the merits of regulating expert testimony and expressed concern that any regulation might be exploited by either side making it difficult to get qualified experts to testify. AAG Carrie Smith offered that court proceedings have inherent protections against unethical conduct such as cross examination and the ability for a judge to issue sanctions for false or misleading testimony. Ms. Pele Fischer from the Arizona Medical Association (ArMA) was present and offered ArMA's assistance on this topic. No action was taken on this issue.

## **I. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING COMMUNITY AND CONSTITUENT RELATIONS, TRAINING AND MEDIA ASSISTANCE**

Ms. Bain indicated that at the last Board meeting, it was discussed that the Board may benefit from the assistance of a professional in the area of constituent relations and media assistance. She stated in the past the Board has utilized the services of the Gordon James firm and posed the question as to whether the Board should contract with Gordon James to assist the Board in addressing issues such as GACCP and the Medical Consultant issues. Ms. Bain indicated the firm could be asked to put together a menu of services, including media training and provide a price list for the services they offer.

Ms. Bain motioned for the board to approve moving forward with obtaining off contract approval from the State Procurement Office for Gordon C. James.

Dr. Farmer seconded the motion.

A discussion ensued about the need for a constituent services/media relations specialist and the focus of the discussion was the cost to the Board and whether the budget would allow for the procurement of the service.

Ms. Bain moved to table the discussion. There was no second and no vote; Dr. Gillard moved to table until October; there was no second and no vote.

## **J. REVIEW OF RESPONSES TO REQUEST FOR INFORMATION (RFI) RELATED TO OUTSOURCING OF ANY OR ALL OF THE LICENSING CREDENTIALING OR VERIFICATION PROCESS**

**Motion:** Dr. Gillard made a motion to enter into Executive Session to receive legal advice and review confidential records pursuant to A.R.S. § 38-431.03(A)(2) (3).

**Second:** Dr. Paul

Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent

Motion passed

The Board entered into Executive Session at 2:58 p.m.

The Board returned to Open session at 3:25 pm

No legal action was taken by the Board during Executive Session

The Board did not take any action on this agenda item.

## **K. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING OPERATIONAL AND ADMINISTRATIVE DUTIES OF THE BOARD**

The Board members discussed the Physician Health Program and expressed concern about the high cost to physicians in the monitoring program. The Board members raised concern that Greenberg and Sucher have been the sole bidders for the contract and suggested that the State Procurement Office may assist in getting additional bidders for the next contract. Board members also raised concern that the cost to the physicians was higher in Arizona than in other states. Board members suggested a price comparison be made. Ms. McSorley indicated that a state by state comparison has been made by Board staff and that Greenberg and Sucher could address Board members' concerns at a future training session. Discussion ensued about changing the program model in the future and potentially giving the participants more choices for monitoring.

Board members discussed the CLEAR Board training they received to meet the legislated requirement for board member training. Board members also discussed their role in the operational functioning of the Board and that the Administrative Committee provides a reporting structure for staff to report to the Board.

## **L. UPDATE ON THE LOOK BACK BEING CONDUCTED BY GREATER ARIZONA CENTRAL CREDENTIALING PROJECT (GACCP)**

Ms. McSorley updated the Board on the progress of the look back project being conducted by GACCP. At this point, 767 of the 3,000 files are complete and GACCP has received an extension until November to complete the project. Ms. McSorley reported currently GACCP is being paid \$11.98 for each completed file. Board staff has been tracking the files and staff has been monitoring the files to ensure the work has been completed.

## **M. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING FUTURE STAFF PROJECTS**

Ms. McSorley informed the Board that a representative from the Federation of State Medical Boards would like to address the Board in February, 2016. Ms. Bain suggested that April might be a better time.

The Board discussed the challenges of regulating telemedicine and multistate practice. Dr. Berg stressed the need for uniformity amongst the states when addressing telemedicine. He requested that the Board read the materials provided and that telemedicine be placed on a future agenda. Dr. Gillard stated that the current law requires a laying on of hands when treating patient and that the Board has issued advisory letters to those who have not complied with statute.

**Motion: Dr. Gillard moved to adjourn the meeting.**

**Second: Ms. Brister**

**Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent**

**Motion Passed**

The meeting adjourned at 4:05 p.m.



*Patricia E. McSorley*  
Patricia E. McSorley, Executive Director