



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258
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FINAL MINUTES FOR SPECIAL TELECONFERENCE MEETING

Held on Monday, May 12, 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 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.

CALL TO ORDER

Dr. Khera called the meeting to order at 6:02 p.m.

ROLL CALL

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

ALSO PRESENT

John Tellier, Assistant Attorney General (AAG), C. Lloyd Vest, II, Executive Director, Pat McSorley, Deputy Director, Alicia Cauthon, Executive Assistant, Mary Bober, Board Operations Manager, Erinn Downey, Investigator, Raquel Rivera, Investigator, James Gentile, Chief Information Officer, and Andrea Cisneros, SIRC Coordinator.

CALL TO THE PUBLIC

NON-TIME SPECIFIC ITEMS

I. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING SUMMARY ACTION

a. MD-13-0885A, PHILLIP T. RAJADAS, M.D.

Dr. Rajadas was not present during the Board's consideration of this case. Ms. Downey summarized for the Board that the case stemmed from the suspension of Dr. Rajadas' Colorado medical license based on investigative findings regarding his care and treatment of a 24 year-old male patient for whom he inappropriately continued to write narcotic prescriptions despite the signs of drug addiction and who died after a third overdose. Board staff queried the Controlled Substance Prescription Monitoring Program (CSPMP) which revealed that Dr. Rajadas' had been prescribing controlled substances to patients who filled the prescriptions in Arizona. Board staff noted that Dr. Rajadas had seen patients at his Arizona clinic. As a result, Board staff offered Dr. Rajadas the opportunity to enter into an interim practice restriction pending the outcome of the Colorado matter. The following month, however, Dr. Rajadas responded declining the offer and indicated that the Colorado matter had been resolved.

Board staff discovered that effective November 15, 2013, Dr. Rajadas entered into a Stipulated Order and Five Year Probation with the Colorado Medical Board. The Order required that he undergo an evaluation at The Center for Personalized Education for Physicians (CPEP) and follow any recommendations, complete CME in prescribing controlled substances, and obtain a practice monitor for a period of three years to conduct monthly random chart reviews. On April 21, 2014, the Colorado Board again suspended Dr. Rajadas' medical license due to his failure to comply with the requirements of the Stipulated Order. Board staff subsequently offered Dr. Rajadas a practice restriction; however, he exceeded the deadline in which to respond.

Dr. Gillard noted that the CSPMP report demonstrated multiple prescriptions for opiates were written by Dr. Rajadas and stated that additional investigation is warranted based on the query results. Board members noted that the Board's Staff Investigational Review Committee (SIRC) reviewed the matter and recommended that Dr. Rajadas complete a CPEP evaluation, or that he submit evidence to demonstrate his completion of the CPEP evaluation pursuant to the Colorado Order in lieu of completing an additional CPEP evaluation. Dr. Khera stated that Dr. Rajadas is clearly a danger to the public in Arizona and spoke in favor of restricting the physician's license.

MOTION: Dr. Khera moved to summarily suspend Dr. Rajadas' Arizona medical license as the public health, safety or welfare imperatively requires emergency action of the Board.

SECOND: Dr. Farmer

Dr. Khera questioned whether there was a mechanism for which Dr. Rajadas could request reinstatement of his Arizona medical license if he is at some point reinstated in Colorado. Mr. Tellier informed the Board that pursuant to statute, after summary suspension of the license, the licensee is entitled to a Formal Hearing before an Administrative Law Judge within sixty days, and that the license remains suspended until that time. Mr. Tellier added that based upon the ALJ's recommended decision, whether it is to continue the suspension or revoke the license, the physician may request that the suspension be lifted or reapply for licensure in the future.

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

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

II. APPROVE OR DENY LICENSE APPLICATION

a. MD-13-1425A, BITA NOORANBAKHT, M.D.

Mr. McCarthy addressed the Board during the call to the public on behalf of Dr. Nooranbakht. He stated that the expiration of Dr. Nooranbakht's license did not involve any adverse action against the physician. Dr. Nooranbakht addressed the Board as well and requested that her Arizona medical license be reinstated.

Ms. Rivera summarized for the Board that because Dr. Nooranbakht had not practiced medicine since the latter part of 2009, she was required to undergo a competency exam or obtain board certification in order to meet the minimum requirements for licensure. Ms. Rivera reported that on March 20, 2014, Dr. Nooranbakht completed an evaluation at CPEP. Dr. Nooranbakht's evaluators determined that she demonstrated an adequate fund of knowledge with minimal educational needs, and that her clinical judgment, reasoning, and documentation were adequate. The CPEP report noted that Dr. Nooranbakht's cognitive function results were mixed with normal scores and poor scores in certain areas. As a result, CPEP's neuropsychology consultant recommended that she undergo further neuropsychological evaluation, which she completed on April 14, 2014. The neuropsychological evaluation demonstrated that Dr. Nooranbakht's level of neurocognitive and behavioral functioning is within normal limits, and that there is no neuropsychological pattern identified that would indicate she does not have the ability to practice in her profession as a physician.

MOTION: Dr. Fromm moved to grant a medical license to Dr. Nooranbakht.
SECOND: Dr. Gillard

Board members were informed that both CPEP and the neuropsychologist are Board approved evaluators. Dr. Khera agreed with the recommendation to grant the physician a license to practice medicine in the State of Arizona as she meets the minimum requirements for licensure at this time based on the evaluation results.

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

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

III. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING EXECUTIVE DIRECTOR (ED) DISMISSALS

Board members discussed the current process regarding ED Dismissals. AAG Mr. Tellier stated that prior to November of 2013, the Board would receive a list of physicians whose complaints were dismissed following this process set forth in A.A.C. R4-16-507. Mr. Tellier stated that unlike other delegated authority, this process does not include Board member concurrence. Mr. Tellier noted that due to what was going on in November of 2013, this process was modified to include Board member concurrence. This modification was implemented to ensure that all cases were properly reviewed before being dismissed. Mr. Tellier stated that in an effort to ensure that the Board's policies and procedures were in compliance with its statutes and rules, it was noted that this practice needed to be revisited. Mr. Tellier informed the Board that, he along with AAG Marc Harris and the ED met and reviewed the current practice as it relates to the applicable statutes and rules. Mr. Tellier stated that unlike other rules, this rule does not include Board member concurrence prior to the ED dismissing a complaint. Mr. Tellier further informed the Board that the rules expressly provide for a formal review process for anyone aggrieved by the action and that the statutes permit the Board to request that any case dismissed by the ED be investigated further. Mr. Tellier then provided the Board with various options available to it including requesting Board staff provide the investigative material along with the list of names; further review the existing statutes and rules to determine whether they need to be modified; and to withdraw the ED's delegated authority.

Mr. Vest stated that the Board has made it clear that its main goal is to be in full compliance with statute and rule. He proposed a process that would enable the Board to review case material and possibly reopen a case dismissed by the ED when further investigation is warranted. Dr. Khera stated that concern had been raised by the Legislature in terms of a lack of oversight by the Board of the ED as well as staff. Dr. Khera noted that it has been the Board's process to receive an ED Report at each meeting that included a list of physicians for which cases had been dismissed by the ED since the preceding Board meeting without corresponding case material. He stated that providing only a list of physician names and license number is not helpful for the Board to have oversight of the process. Dr. Khera expressed that it is the Board's responsibility to ensure that Arizona physicians are providing safe patient care. Mr. Tellier clarified that the Board, acting as a whole, has the ability to reopen an investigation as these matters come before the Board. Mr. Tellier suggested that a tagline could be added to the dismissal letter indicating that the case has been dismissed, but will be reviewed by the Board at its next regular meeting and possibly reopened for further investigation.

Dr. Farmer questioned whether adding the tagline meets the intent of the statute, and stated that he believes that the proper solution is to communicate clearly to the parties that although the matter was dismissed by the ED, it is subject to Board review. Dr. Gillard stated that the proposed process seems to go above and beyond the requirements of R4-16-507.B. Ms. Salter questioned the effective date of the dismissal under the proposed process and spoke against having cases that are open-ended in terms of Board review.

MOTION: Dr. Farmer moved to amend the dismissal letter to add a tagline indicating that the matter is subject to final review of the Board on a specific date giving closure, while moving cases through expeditiously. Dr. Farmer further moved that the Board be provided a list of all physicians in which cases are dismissed by the Executive Director with a summary and materials that support the recommendation of dismissal for Board review prior to the Board meeting.

SECOND: Dr. Khera

Dr. Perry questioned whether a legal conflict exists in such situations where the ED makes a final determination to dismiss a case and the Board reopens the matter. Mr. Tellier stated that the way in which R4-16-507 is currently written, the ED with concurrence of staff shall dismiss the complaint if review shows that the complaint is without merit, that the list of dismissed cases shall be provided to the Board at each meeting, and that the Board has the ability to reopen or reinvestigate the case. Dr. Farmer recognized that the rule indicates that the ED "shall" dismiss a complaint that he thinks is frivolous. Dr. Perry noted that the rule does not mention notification of the parties involved prior to the Board meeting. Dr. Khera questioned whether the dismissal letter should be held until the Board has had the opportunity to review the material at its meeting. Mr. Vest explained that the issuance of the dismissal letter has been the official method of dismissing a complaint, which he stated had been the Board's practice for the last nine years. Mr. Tellier stated that his interpretation of the rule indicates that the dismissal letter is to be issued at the time the case is dismissed, and that the Board had the ability to review the matter at its next meeting. Dr. Paul spoke in favor of holding the dismissal letter until the Board has had the opportunity to review the cases. Mr. Vest requested that the Board adopt the proposed process and revisit the matter in six months to determine whether it is sufficient or needs to be readdressed.

Dr. Farmer withdrew his motion. He stated that it seems the Board members were in agreement with trying the proposed process of receiving the material in addition to the list of physicians' names.

MOTION: Dr. Farmer moved to adopt the suggested procedure of the Board being provided a list of names of physicians in which cases had been dismissed by the Executive Director as well as review materials prior to the Board meeting.

SECOND: Ms. Brister

Dr. Perry recommended that Board staff prepare a summary of each dismissal for Board review in lieu of the case materials. Dr. Khera stated he finds it reasonable for Board staff to provide the investigative file in its entirety rather than having staff prepare a summary of each case. Dr. Farmer reiterated his concern regarding whether holding the dismissal letter until Board review complies with the law. When asked, Mr. Tellier stated that there is no mention of the timing of the dismissal letter in statute or rule. He explained to the Board that the rule requires that a list is provided of dismissed cases and not cases for recommended dismissal.

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

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

Board members discussed the timing of the dismissal letter to parties involved in the cases. Dr. Fromm stated that the rule clearly states that the ED shall dismiss cases that he finds are without merit. Dr. Fromm added that he believes that holding the dismissal letter until the Board has had the opportunity to review the cases is not compliant with the rule. Dr. Farmer stated that the intent of the Board is to follow the letter of the law. He stated that the Board should allow the ED to make the dismissal with the secondary intent to allow the Board to do their due diligence by supervising the ED's actions by reviewing the case materials.

MOTION: Dr. Khera moved to direct the Executive Director to dismiss complaints that are found to be without merit, with the concurrence of staff, and to provide the Board with the information concerning those dismissals. Dr. Khera further moved that only after review by the Board at its next regular meeting, letters of dismissal shall be sent out unless and until the Board decides after its review to reopen the investigation.

SECOND: Ms. Salter

Mr. Tellier clarified that upon review of the dismissed cases at the Board meeting, any Board member can motion to have a particular matter reopened for further review, and that the Board as a whole will need to vote on the motion. Dr. Farmer questioned whether delaying the letter until after the meeting met the letter of the law. Mr. Tellier stated that the spirit of the law requires that upon determination of the dismissal, the parties involved should be notified of the decision and that it is subject to further review by the Board.

Mr. Vest requested clarity and Board direction in terms of the ED's authority to dismiss a complaint. He questioned what affirmative action would need to be taken by the ED in order to signify that a complaint had been dismissed, if the dismissal letters are being held until after Board review. Dr. Khera stated that the cases can be dismissed by the ED and referred to the full Board for review, which will be the fulfillment of the ED's duty to dismiss cases pursuant to rule. Dr. Gillard spoke against the motion and stated that mechanism already exists for dismissing cases and allowing the Board the ability to review the ED's actions. Dr. Berg spoke against the motion as well and added that he believes sending the letter at the time of the decision to dismiss by the ED does not prevent the Board from overseeing the ED's duties.

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

VOTE: 6-yay, 4-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

The meeting adjourned at 7:49 p.m.



C. Lloyd Vest, II

C. Lloyd Vest, II, Executive Director