



## Arizona Medical Board

1740 W. Adams St., Suite 4000 • Phoenix, Arizona 85007

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### DRAFT MINUTES FOR REGULAR SESSION MEETING Held on Monday, August 5, 2019

At: 1740 W. Adams St., Board Room A • Phoenix, Arizona

#### **Board Members**

R. Screven Farmer, M.D., Chair  
James M. Gillard, M.D., M.S., F.A.C.E.P., F.A.A.E.M., Vice-Chair  
Edward G. Paul, M.D., Secretary  
Jodi A. Bain, M.A., J.D., LL.M.  
Bruce A. Bethancourt, M.D., F.A.C.P.  
David C. Beyer, M.D., F.A.C.R., F.A.S.T.R.O.  
Teresa L. Connolly, D.N.P., R.N., N.E.A.-B.C.  
Laura Dorrell, M.S.N., R.N.  
Gary R. Figge, M.D.  
Pamela E. Jones  
Lois E. Krahn, M.D.

#### **GENERAL BUSINESS**

##### **A. CALL TO ORDER**

Chairman Farmer called the meeting to order at 8:03 a.m., and read aloud the Board's Mission Statement.

##### **B. ROLL CALL**

The following Board members were present: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

Present among Board staff include: Patricia McSorley, Executive Director; Kristina Fredericksen, Deputy Director; William Wolf, M.D., Chief Medical Consultant; Raquel Rivera, Investigations Manager; Amy Skaggs, Staff Investigational Review Committee (SIRC) Coordinator; Michelle Robles, Board Operations Manager; and, Andrea Cisneros, Minutes Administrator. Also present among Board staff include: Carrie Smith, Assistant Attorney General (AAG), Anne Froedge, AAG, Roberto Pulver, AAG and Seth Hargraves, AAG who was present as Independent Legal Advisor as identified herein.

##### **C. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA**

Individuals that addressed the Board during the Public Statements portion of the meeting appear beneath the matter(s) referenced.

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

- Discussion Regarding Annual Planning Meeting Topics  
Executive Director McSorley solicited discussion topics from the Board members to be placed on the Board's upcoming Annual Planning Meeting agenda. She explained that the second day of the Board's regular meeting in October 2019 will be held for the purposes of Board training and planning. Potential topics include presentations from the FSMB, CPEP, and Board staff including IT projects.

Additionally, Chairman Farmer proposed that Board members be provided with educational documentation at each meeting to outline the Board's internal processes more in depth in lieu of covering all of the many processes in one meeting.

- **Discussion and Approval of 2020 Meeting Calendar**  
Board members discussed the scheduled Board meetings for 2020. Board members discussed preferred meeting dates. Executive Director McSorley reported that she would circulate among the members proposed dates for approval.
- **Discussion and Possible Action Regarding Implementation of HB2569**  
Executive Director McSorley updated the Board regarding the Agency's implementation of HB2569 regarding reciprocity. She explained that the staff is currently working on the application and that a draft substantive policy statement has been prepared for the Board's approval under item M.

The Board discussed the process involved with this new licensing legislation, noting that applicants under this item are required to submit proof of established residency in Arizona. Executive Director McSorley stated that how this new legislation will impact the licensing review process remains to be seen. Dr. Figge recognized that the new legislation has allowed for another pathway for physicians to apply for licensure in Arizona. Board members questioned whether the staff will have the ability to review prior discipline for applicants under this item. AAG Smith clarified that there is similar language in the applicable statutes that requires the Board to determine whether there has been a history of discipline and if so, determine whether those matters have been corrected or resolved.

#### **E. CHAIR'S REPORT**

- **Board Member Recognition and Reappointments**  
Chairman Farmer announced that Drs. Figge and Krahn have been reappointed to the Board.
- **Discussion Regarding Alternative Case Resolution Process**  
Chairman Farmer stated that the administrative team has been looking into alternative case resolution processes. He thanked the Board's staff and expressed his appreciation for the steady workload, recognizing that while the number of investigations has not increased, they have increased in complexity and the level of review that is required. Chairman Farmer also pointed out that the Board has been meeting for teleconferences in the intervening months in order to avoid delays in the adjudication process. He stated that staff is currently reviewing alternatives to the Board's current schedule, including maintaining communication regarding cases that have been agendized for the Board's review but remain in active negotiations so that the Board members can allocate their review time accordingly. He requested that the Board members provide feedback regarding the current processes in order to take all suggestions into account. Chairman Farmer added that staff is also reviewing the processes of other state boards to review how they address their workload. He pointed out that the Board has the statutory authority to divide into committees to consider disciplinary actions, which he stated is commonly done in larger states.

#### **F. LEGAL ADVISOR'S REPORT**

There was no report to the Board under this item.

#### **G. DISCUSSION AND UPDATE ON JULY 12, 2019 ADMINISTRATIVE COMMITTEE MEETING**

The Committee's Chairwoman was not present for this portion of the Board's meeting, and Chairman Farmer stated that this item will be reagendized for a future Board meeting.

#### **H. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING REQUEST FOR APPROPRIATION FOR PROPOSED 2021 FISCAL YEAR DECISION PACKAGE 1: REQUIRED IT PLATFORM MIGRATION AND MODERNIZATION**

Executive Director McSorley explained that the Agency is requesting monies in order to move forward with modernization of the IT platform. She clarified that the additional monies would be pulled from the Board's Reserve Fund, which is generated from monies not spent in the prior year and licensing fees. She added that if approved, the additional appropriation would be placed into the Automated Projects Fund (APF), noting that any expenditure would require prior approval by ADOA.

**MOTION: Ms. Jones moved to approve the Request for Appropriation for Proposed 2021 Fiscal Year Decision Package 1: Required IT Platform Migration and Modernization.**

**SECOND: Dr. Bethancourt**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

**I. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING REQUEST FOR APPROPRIATION FOR PROPOSED 2021 FISCAL YEAR DECISION PACKAGE 2: PROCUREMENT OF SALESFORCE LICENSES**

Executive Director McSorley explained that this request regarded an increase to the Board's funds to have available in the event that the Agency will need to operate under two systems simultaneously.

**MOTION: Ms. Jones moved to approve the Request for Appropriation for Proposed 2021 Fiscal Year Decision Package 2: Procurement of Salesforce Licenses.**

**SECOND: Dr. Bethancourt**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

**J. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING THE DRAFT STRATEGIC PLAN FOR 2020 TO 2024**

Executive Director McSorley explained that the Strategic Plan required annual Board review and approval. She explained changes to the draft language. The Board discussed the reported investigation and licensing time frames. She pointed out an increase in education outreach measures and staff involvement.

**MOTION: Dr. Figge moved for the Board to approve the Strategic Plan for 2020 – 2024, pending amendment of the reported licensing numbers.**

**SECOND: Dr. Bethancourt**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

**K. REVIEW, DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING THE DRAFT ANNUAL REPORT FOR 2019**

Executive Director McSorley stated that the Board's Administrative Committee recommended changes which she stated were incorporated into the draft presented for the Board's approval. Board members also discussed the term lengths of its members, noting that Board members are limited to serving two terms, each of five years length. Board staff clarified that some Board members are elected for Board participation in place of a member that has left their term prior to the expiration of their five year term. In those instances, a Board member may serve the remainder of time on the prior member's term in addition to having the ability of serving two

additional five year terms if elected to continue. The Board members also noted that the Board is currently short one physician member.

**MOTION: Dr. Figge moved to approve the 2019 Annual Report.**

**SECOND: Ms. Jones**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

#### **L. UPDATE AND DISCUSSION REGARDING FY 2020 BUDGET ALLOCATION AND/OR APPROPRIATION DESIGNATED FOR CLOUD SERVICES**

Deputy Director Fredericksen explained that the Agency is in the process of moving non-database files to a cloud-based platform. She noted that the funds for the project have been included in the APF and the Agency is working with different vendors to establish a sound project plan and obtain the tools needed to complete the project. She stated that the APF requires monthly reporting, and that the next step in the process is to draft an expenditure plan.

#### **M. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING PROPOSED SUBSTANTIVE POLICY STATEMENT (SPS) #15 ADDRESSING THE IMPLEMENTATION OF HB2569, LICENSING RECIPROCITY**

Chairman Farmer observed that the SPS was drafted to provide guidance in relation to the implementation of HB2569, licensing reciprocity. He noted that the draft was prepared to provide a list of items that would be acceptable to establish Arizona residency.

Board members discussed and agreed to revisions to the draft SPS. Chairman Farmer opined that the advice and policy are sound, and spoke in favor of approval with minor edits made per the Board's discussion. Board members recognized that the passing of HB2569 has provided another pathway for licensure through reciprocity, if the applicant is able to prove established residency in Arizona for at least one year.

**MOTION: Dr. Beyer moved for the Board to adopt the proposed Substantive Policy Statement (SPS) #15 addressing the implementation of HB2569, licensing reciprocity as drafted except as follows: remove "meets" from the second line of the second paragraph, remove the second "a" from the second bullet, remove proof of major banking services in Arizona, and clarify enrollment of children in Arizona K-12 schools.**

**SECOND: Dr. Bethancourt**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

#### **N. INTRODUCTION AND DEMONSTRATION OF TABLEAU FINANCIAL DASHBOARD**

Deputy Director Fredericksen presented the Board with a preview of the Tableau Financial Dashboard and stated that the Agency is working on providing Board members access to the information to track the Agency's progress. She proposed adding training to the October planning meeting to allow Board members to familiarize themselves with the dashboard and how to navigate through the data.

#### **O. INTRODUCTION OF INTERNAL AMB PROJECT MANAGER FOR IT MODERNIZATION PROJECTS**

Deputy Director Fredericksen introduced the Agency's internal contracted project manager who is spearheading the different IT projects for the Board. Chairman Farmer thanked the Board's staff for their efforts and support, and stating that while it is part of the Board's duty to adjudicate

cases, it is also the Board's responsibility to exercise oversight of the financial aspect of the Agency.

## LEGAL MATTERS

### P. MOTION FOR REHEARING/REVIEW (Formal Hearing)

1. MD-19-0176A, KANG LU, M.D., LIC. #45528

Dr. Lu participated telephonically during the Board's consideration of this matter. Ms. Bain also participated telephonically for this agenda item. AAG Roberto Pulver was present on behalf of the State.

Dr. Lu requested that the Board allow him to appear in person before the Board for a rehearing on his case. He demanded that he be provided the nature of accusations against him, and stated that he believed his peers would see value in his perspective of the truth in contrast to the material that has been presented in this case.

Dr. Gillard recalled that this matter was considered at Formal Hearing and the Board voted to uphold the recommendations of the Administrative Law Judge at its previous meeting. AAG Pulver commented that Dr. Lu had the opportunity to participate in the Board's investigation and the Formal Hearing to provide any evidence to defend his position. He pointed out that Dr. Lu represented himself at the Formal Hearing and was informed on numerous occasions that he should legal counsel to help him navigate through the process. AAG Pulver stated that Dr. Lu had received the Board's Complaint and Notice of Hearing which included a statement of the allegations against him. He referred the Board members to the last paragraph in the Administrative Law Judge's recommended order, which he stated is the best summation of the case.

Dr. Gillard noted that if the Board denied the motion for rehearing/review, the physician has additional appeal rights through the court system. Chairman Farmer stated that the Board has reviewed the motion for rehearing/review as well as the criteria per statute for granting such a motion. Chairman Farmer opined that Dr. Lu has not met those standards as outlined in A.A.C. R4-16-103D and spoke in favor of denying the motion for rehearing/review.

**MOTION: Dr. Figge moved for the Board to deny the motion for rehearing/review.**

**SECOND: Dr. Paul**

**VOTE: The following Board members voted in favor of the motion: Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board member was absent: Dr. Krahn.**

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

**MOTION PASSED.**

Dr. Figge stated that he strongly encouraged the physician to obtain legal counsel.

### Q. MOTION FOR REHEARING/REVIEW(Formal Interview)

1. MD-18-0454A, TIMOTHY J. GELETY, M.D., LIC. #21851

Attorney Paul Giancola was present on behalf of Dr. Gelety. Ms. Bain participated telephonically during the Board's consideration of this agenda item.

Mr. Giancola stated that the Board considered this matter in April 2019. He stated that the Medical Consultant (MC) and SIRC both felt that there was no actual harm to patients in this case, and he recalled that the Board's vote on the disciplinary sanction was split with five voting for the motion and three members voting against it. Mr. Giancola stated that the Board's decision in this case was not justified by the evidence, noting that communication and documentation concerns have been addressed by the physician in that he has completed CME in recordkeeping, and participates in therapy for the communication issues identified. He requested that the Board revisit its sanction in this

matter, and stated that the issuance of an Advisory Letter is supported by the evidence in this case.

Dr. Gillard recognized that there were mitigating circumstances involved in this case and proposed rehearing the case for further consideration. Dr. Figge questioned whether the Board should revisit the case, or just revisit the penalty issued by the Board.

**MOTION: Dr. Paul moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).**

**SECOND: Dr. Figge**

**VOTE: The following Board members voted in favor of the motion: Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Dr. Krahn.**

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

**MOTION PASSED.**

The Board entered into Executive Session at 9:15 a.m.

The Board returned to Open Session at 9:26 p.m.

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

Dr. Gillard stated that after hearing legal procedural advice, he moved to grant a review based on A.A.C. R4-16-103D to determine whether the penalty in this case was excessive.

**MOTION: Dr. Gillard moved for the Board to grant a review pursuant to A.A.C. R4-16-103D for excessive or insufficient penalties.**

**SECOND: Dr. Figge**

Dr. Beyer spoke against the motion, noting that he voted against the Board's motion for disciplinary action, and stated that he did not believe anything had changed since the last time the case was considered by the Board. He stated the motion should not be granted as there are no new facts for the Board to consider. Dr. Bethancourt recalled the underlying patient care concerns raised by the Board at its previous discussion of this case. He noted that the hospital forms did not document the physician's plans for ovary reimplantation and the patient's surgery was ultimately cancelled. Ms. Jones observed that Dr. Gelety's prior Board history included the issuance of three Advisory Letters, two of which she noted involved similar concerns as the current case.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Figge, Dr. Gillard, and Dr. Paul. The following Board members voted against the motion: Ms. Bain, Dr. Beyer, Dr. Connolly, Ms. Dorrell, and Ms. Jones. The following Board member abstained: Chairman Farmer. The following Board member was absent: Dr. Krahn.**

**VOTE: 4-yay, 5-nay, 1-abstain, 0-recuse, 1-absent.**

**MOTION FAILED.**

In response to a Board member question, AAG Smith informed the Board that unless another Board member has a motion for review, the matter would be concluded. Chairman Farmer stated that the Board's decision would be reduced to writing and sent to the parties involved.

## **R. FORMAL INTERVIEWS**

1. THIS CASE WAS PULLED FROM THE AGENDA.

2. MD-19-0210A, CONSTANTINE MOSCHONAS, M.D., LIC. #19915

Dr. Moschonas was present with Attorney Steve Perlmutter. Board staff summarized that patients were certified for Medical Marijuana Certifications (MMC) without the physician's review of the Controlled Substance Prescription Monitoring Program (CSPMP) database

as required. Board staff reported that the physician responded to the investigation stating that either he or his Nurse Practitioner (NP) reviewed the CSPMP data on the patients receiving MMCs. Board staff noted that the CSPMP review was not done at the time of the certification on some occasions. Board staff further reported that the physician has since indicated that he has discontinued issuing MMCs.

Dr. Perlmutter requested that the Board dismiss the case against Dr. Moschonas. Dr. Perlmutter explained that the physician performed 24 MMCs for the timeframe reviewed by the Board, and that either Dr. Moschonas or his NP reviewed the CSPMP data for each patient. Dr. Perlmutter further argued that the Medical Marijuana Act is ambiguous.

Dr. Moschonas addressed the Board, stating that for the past 25 years, he has practiced in neurology specializing in the management of patients with complex neurological issues, and has published results in neurology clinical practice. He explained that the patients who received MMCs in this case were patients of his for more than five years, and that his NP performed nine of the queries for the 24 patients. He stated that because the NP holds her own DEA registration, he was informed that she could not serve as his delegate and perform the CSPMP database reviews on his behalf. Dr. Moschonas stated that he was not aware that he was required to review the CSPMP information on the date that the certifications were issued, though he stated that this was done for 70% of the patients reviewed, while the remaining patients had their queries performed during a prior visit.

**MOTION: Dr. Bethancourt moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).**

**SECOND: Dr. Figge**

**VOTE: The following Board members voted in favor of the motion: Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Dr. Krahn.**

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

**MOTION PASSED.**

The Board entered into Executive Session at 9:48 a.m.

The Board returned to Open Session at 10:02 a.m.

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

Dr. Bethancourt noted that the case information demonstrated that most of the CSPMP database reviews were performed within at least six months of the recertification being issued. Dr. Moschonas explained that he performs the database queries during visits in preparation of the annual recertification. He stated he believed that the NP was authorized to perform the queries as his designee, and explained that the NP would print the data and they would review the information together for each patient. Dr. Perlmutter provided additional legal arguments on behalf of his client.

Board staff readdressed the Board, pointing out that correspondence submitted by the physician and his counsel during the course of the investigation indicated that there were three different patients whose CSPMP query was performed in 2017, one year prior to the issuance of their MMCs. Dr. Perlmutter referred the Board to the Investigation Report included in the file, which referenced that there was only one patient whose CSPMP query was performed the year prior to receiving their MMC.. Board staff confirmed that the information was included in the Board's material and reiterated that it was included in correspondence submitted to the Board from the physician and attorney.

Dr. Bethancourt stated he found that the physician did not engage in unprofessional conduct in this case and spoke in favor of dismissing the case.

**MOTION: Dr. Bethancourt moved for dismissal.**

**SECOND: Dr. Gillard**

Dr. Gillard spoke in favor of the motion, noting that the physician's practice is not specific to issuing MMCs. Dr. Figge clarified that the information was included in the material for review. Dr. Beyer spoke in favor of the motion, and added that anyone could reasonably assume that checking the database a year prior to certification is not sufficient.

Chairman Farmer spoke in favor of the motion, stating that this case is significantly different than most reviewed by this Board for similar allegations involving CSPMP queries for MMC patients. Dr. Connolly recognized that Dr. Moschonas has authored medical literature on this subject. Chairman Farmer stated that the Board supports good medical care and is not in the business of restricting thoughtful prescribing. Chairman Farmer added that he appreciated that this is a difficult patient population to manage.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

3. MD-19-0278A, LUIS R. LOPEZ, M.D., LIC. #12246

Dr. Lopez was present without legal representation. Board staff summarized that this matter stemmed from an investigation involving Dr. Lopez's Physician Assistant (PA) wherein staff had difficulty obtaining a copy of the Delegation Agreement (DA). Board staff stated that staff did obtain the original DA that was signed in 2011, but did not receive an updated one. Board staff obtained an updated DA dated December of 2018 and was informed that one had been updated and signed on an annual basis; however, no additional DAs were provided for review. Board staff clarified that according to statute, the DA is to be signed and updated annually, maintained by the practice, and made available at the Board's request.

Dr. Lopez stated that he has worked with his PA for the past 25-30 years and that the DA has been updated annually in their practice. Dr. Lopez stated that the PA had difficulty communicating with the Board's staff during that investigation, and that there was confusion as to which DA was requested by the Board. He also provided a copy of a failed email that the PA attempted to submit to Board staff to satisfy their inquiry. He stated that it was the understanding of his PA that the Board had only inquired as to the original DA.

Dr. Paul questioned whether there were annual updates made to the DA in the practice. Dr. Lopez explained that his PA was under the impression that the Board had only requested the original DA and that they were unsuccessful in their attempts to contact Board staff to obtain clarification. Board staff clarified that staff had difficulty communicating with the PA under the prior investigation, and that the communication issues were not part of Dr. Lopez's case. In response to Dr. Paul's line of questioning, Dr. Lopez reiterated that the agreement was updated and signed every December. Board staff reported that there has been no evidence provided to the Board to support Dr. Lopez's testimony of updating the DA annually. Ms. Jones observed that Dr. Lopez's prior Board history included the issuance of at least two Advisory Letters that involved inadequate supervision. The Board was informed that the previous Advisory Letters were issued prior to the new DA requirements that became effective in 2011.

Dr. Figge questioned why the physician did not originally respond to the Board on his own behalf regarding the DA inquiry. Dr. Lopez explained that because the matter stemmed from the PA case, he relied on his PA to address the Board's concerns. Dr. Figge stated that the physician should have addressed the Board on his own behalf to ensure that the appropriate information was being transmitted. Chairman Farmer expressed concern in the physician's lack of oversight of the investigation process regarding his license. Board staff clarified that the two investigations were not conducted

in parallel, and that when the PA was initially notified of the Board's concerns, he was requested to provide the DA that was in effect at the time of the underlying patient care incident that occurred in June of 2018. The only DAs provided to Board staff during either investigation were the original agreement dated 2011 and an updated agreement dated December of 2018, which was dated after the incident being investigated in the underlying PA investigation. Dr. Figge stated that had the PA originally responded timely to Board staff and provided the requested documentation, the Board would not have incurred costs and time spent initiating an investigation against Dr. Lopez's license.

In closing, Dr. Lopez stated that this all stemmed from a misunderstanding. Dr. Paul stated that he found there has been evidence of unprofessional conduct in this case and spoke in favor of supporting SIRC's recommendation for sustained violations of A.R.S. § 32-1401(27)(a) and (kk).

**MOTION: Dr. Paul moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(a), A.R.S. § 32-2531(H)(4), and A.R.S. § 32-1401(27)(kk) for reasons as stated by SIRC.**

**SECOND: Dr. Figge**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

Dr. Paul stated that based on the physician's testimony and prior issuance of Advisory Letters relating to inadequate supervision, he agreed with SIRC's recommendation to impose disciplinary action in the form of a Civil Penalty.

**MOTION: Dr. Paul moved for draft Findings of Fact, Conclusions of Law and Order requiring Dr. Lopez to pay a Civil Penalty in the amount of \$1,000 to be paid within 90 days via certified funds.**

**SECOND: Dr. Figge**

Dr. Figge reiterated that investigations conducted by this Board cost time and money. He stated that the physician would not be appearing before the Board had the issue been handled appropriately at the onset. Dr. Gillard spoke against the motion, stating that the PA responded to Board staff and an updated DA was eventually provided. Dr. Gillard proposed issuing the physician an Advisory Letter in lieu of formal discipline. Dr. Beyer spoke in favor of the motion, stating that there has been ample opportunity for the parties involved to rectify the problem, but there has been no evidence of an updated DA in place at the time in question. Dr. Beyer added that an Advisory Letter is not a sufficient resolution in light of past Advisory Letters for inadequate supervision, stating that a Civil Penalty in the amount of \$1,000 is the minimum that can be assessed.

Dr. Paul spoke for the motion, stating that he believed the matter rises to the level of discipline based on the physician's lack of ownership of the issues in this case and the lack of response to the Board. Chairman Farmer also spoke for the motion, stating that there is evidence to support the lack of cooperation with Board staff and the lack of ownership of the problem, and stated that he found the physician's testimony that a DA is updated and maintained annually to be disingenuous.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board member abstained: Dr. Gillard. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 8-yay, 0-nay, 1-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

## S. FORMAL LICENSING INTERVIEWS

1. MD-19-0175A, JASON J. EMER, M.D., LIC. #N/A

Dr. Emer was present with Attorney Paul Giancola. Board staff summarized that the applicant resigned while under investigation involving an alleged patient privacy violation, and that the Illinois Board required him to complete an ethics and boundaries course prior to granting licensure. Board staff added that California and Nevada issued reciprocal disciplinary sanctions against Dr. Emer based on the Illinois Board action. At its June 2019 meeting, the Board voted to invite the applicant to appear before the Board for a Formal Licensing Interview.

Mr. Giancola explained that in 2007, Dr. Emer received his medical degree in Illinois and remained in Chicago for a one year internship, and went on to participate in a combined residency and fellowship in New York. Mr. Giancola stated that during Dr. Emer's last year in residency, an issue was raised regarding the physician allowing someone to sub for him at a clinic on multiple occasions due to personal medical issues. Mr. Giancola stated that Dr. Emer successfully completed the residency program and that what he believed was an internal issue was ultimately reported to the New York Board. Subsequently while participating in two part-time fellowship programs in California, Dr. Emer was asked to resign from both programs after it was discovered that he posted cosmetic patients' before and after photos without clearing this with the preceptor in office or clinic. Mr. Giancola stated that at that time, Dr. Emer held active licensure in California and New York, and that he later obtained licensure in Florida and Nevada without incident. However, in 2017, Dr. Emer applied to the Illinois Board, he was issued discipline and required to complete the boundaries course. Mr. Giancola added that the Nevada Board later disciplined Dr. Emer for failure to report the Illinois sanction and for the action taken by Illinois. He stated that the California also took reciprocal action and issued Dr. Emer a Letter of Reprimand in 2018. Mr. Giancola closed in saying that Dr. Emer plans to practice in Arizona to provide dermatological cosmetic treatments in addition to expanding his not-for-profit burn and scar tissue clinic for patients with traumatic scarring.

Dr. Emer stated that he has remediated the prior issues and that he was not aware that what occurred during his last year of residency would be disclosed as an issue. Dr. Emer explained that the matter involved a photo that was posted displaying before and after images of a cosmetic patient's surgical results. He stated that verbal consent was obtained in the surgical clinic, and that the paper consent form was owned by the hospital. Dr. Beyer questioned how the applicant has incorporated what he learned from the boundaries course into his practice. Dr. Emer reported that his office changed their documentation to be more particular based on what a patient is authorizing them to show. He stated that he has also learned more about detailed questions he could be asking during patient encounters in relation to sensitive issues and privacy. Ms. Jones questioned whether Dr. Emer practiced in a solo practice in California. Dr. Emer indicated that he worked in a group setting, and that he planned to join a practice in Arizona that is owned by one of his colleagues in California.

In closing, Dr. Emer thanked the Board for allowing him to appear, and stated that he looked forward to expanding his not-for-profit surgical clinic.

**MOTION: Dr. Paul moved for the Board to grant the license.**

**SECOND: Dr. Gillard**

Dr. Beyer stated that in light of the applicant's testimony, his concerns were addressed and he supported granting the license.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**  
**MOTION PASSED.**

## **T. FORMAL INTERVIEWS**

1. THIS CASE WAS MOVED TO ITEM Y. #4.
2. THIS CASE WAS MOVED TO ITEM Y. #5.
3. THIS CASE WAS MOVED TO ITEM Y. #2.

## **CONSENT AGENDA**

### **U. CASES RECOMMENDED FOR DISMISSAL**

1. MD-18-0934A, DARRELL M. BRIMHALL, M.D., LIC. #48926  
Attorney Scott King addressed the Board during the Public Statements portion of the meeting on behalf of Dr. Brimhall.

**MOTION: Dr. Gillard moved for dismissal.**

**SECOND: Dr. Paul**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

### **V. CASES RECOMMENDED FOR ADVISORY LETTERS**

**MOTION: Ms. Jones moved to issue an Advisory Letter in item numbers 1-5.**

**SECOND: Dr. Figge**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

1. MD-18-0651A, RENZO M. CATALDO, M.D., LIC. #29080  
Dr. Cataldo addressed the Board during the Public Statements portion of the meeting along with Attorney Yusra Bokhari.

**RESOLUTION: Issue an Advisory Letter for inadequate informed consent. There is insufficient evidence to support disciplinary action.**

2. MD-18-0760A, JASON SHOU, M.D., LIC. #46405

**RESOLUTION: Issue an Advisory Letter for failure to identify an occlusion of a branch of the right middle cerebral artery in a symptomatic patient resulting in residual left sided weakness. There is insufficient evidence to support disciplinary action.**

3. MD-19-0152A, KUSHAGRA KATARIYA, M.D., LIC. #47569

Complainant LD and RD spoke during the Public Statements portion of the meeting. Dr. Katariya also addressed the Board during Public Statements.

**RESOLUTION: Issue an Advisory Letter for failing to timely treat a suspected infection. There is insufficient evidence to support disciplinary action.**

4. MD-18-1044A, PREETI MALHOTRA, M.D., LIC. #30645

**RESOLUTION: Issue an Advisory Letter for failing to further investigate a patient presenting with symptoms consistent with a malignancy. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the**

activities that led to the investigation may result in further board action against the licensee.

5. MD-18-0154A, CHINWE N. N. CHUKWURAH, M.D., LIC. #51733  
Dr. Chukwurah addressed the Board during the Public Statements portion of the meeting.

**RESOLUTION:** Issue an Advisory Letter for failing to perform Serum Protein Electrophoresis testing in a patient with MGUS with symptoms of bone pain and fatigue and intermittent abnormal CBC findings. There is insufficient evidence to support disciplinary action.

6. MD-19-0246A, TAMMY M. NUSBAUM, M.D., LIC. #41970  
Ms. Jones posed an administrative question to Board staff, questioning whether the Board had a legal obligation or responsibility to notify the appropriate agency to perform a well check on the infant involved in this case to ensure no evidence of neglect or abuse. Dr. Coffey stated that physicians are obligated to report any concerns regarding neglect or abuse. AAG Smith informed the Board that the matter could be referred to the Department of Child Services (DCS) for review.

Ms. Jones spoke in favor of issuing the Advisory Letter and directed Board staff to refer the matter to DCS.

**MOTION:** Ms. Jones moved for the Board to issue an Advisory Letter for failing to document the performance of further evaluation of an infant who presented with linear injuries to his back. There is insufficient evidence to support disciplinary action.

**SECOND:** Ms. Dorrell

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

## **W. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION (CME) ORDERS**

**MOTION:** Dr. Gillard moved to issue an Advisory Letter with Non-Disciplinary CME Order in item numbers 1-4.

**SECOND:** Dr. Paul

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

1. MD-18-0770A, IMRAN KAZEM, M.D., LIC. #36483  
**RESOLUTION:** Issue an Advisory Letter with Non-Disciplinary CME Order for prescribing medications without performing a physical exam, failing to maintain medical records, and failing to query or report to the CSPMP. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, successfully complete CPEP's ProBE course in ethics. The CME hours shall be in addition to the hours required for license renewal.
2. MD-19-0038A, MANITH S. MANN, M.D., LIC. #32732  
**RESOLUTION:** Issue an Advisory Letter with Non-Disciplinary CME Order for inadequate medical records and failure to formally discharge a patient. While there

is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 5 hours of Board staff pre-approved Category I CME in medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.

3. MD-19-0301A, REBECCA M. HSU, M.D., LIC. #29988  
**RESOLUTION:** Issue an Advisory Letter with Non-Disciplinary CME Order for failure to maintain records, failure provide notification of the toxicology results in a timely manner and for failing to timely perform a private autopsy. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 5 hours of Board staff pre-approved Category I CME in communication and ethics. The CME hours shall be in addition to the hours required for license renewal.
4. MD-16-1463A, BENJAMIN H. VENGER, M.D., LIC. #20605  
**RESOLUTION:** Issue an Advisory Letter with Non-Disciplinary CME Order for insufficient medical record keeping. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete the intensive, in-person course regarding medical recordkeeping offered by CPEP. Within thirty days of completing the Board ordered CME, the physician shall enroll into CPEP's personalized implementation program (PIP). The CME hours shall be in addition to the hours required for license renewal.

#### **X. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS**

1. MD-18-0663A, JOSHUA R. OLSON, M.D., LIC. #47493  
**MOTION:** Ms. Jones moved to uphold the dismissal.  
**SECOND:** Dr. Bethancourt  
**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.  
**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.  
**MOTION PASSED.**

#### **Y. PROPOSED CONSENT AGREEMENTS (Disciplinary)**

**MOTION:** Dr. Figge moved to accept the proposed Consent Agreement in item numbers 1 and 3-5.  
**SECOND:** Dr. Gillard  
**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.  
**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.  
**MOTION PASSED.**

1. MD-18-0275A, MICHAEL G. WADE, M.D., LIC. #15797  
**RESOLUTION:** Accept the proposed Consent Agreement for Letter of Reprimand and Two Year Probation. Dr. Wade shall enter into a contract with a Board-approved monitoring company to perform periodic chart reviews at his expense. The chart reviews shall involve current patients' charts for care rendered after the date Dr. Wade completed intensive, in-person CME in controlled substance prescribing.
2. MD-17-1176A, AYMAN N. AWAD, M.D., LIC. #20281

Ms. Jones questioned whether the Board should consider requiring the physician to utilize a chaperone and to continue in therapy. Board staff explained that SIRC believed the extended boundaries and ethics course offered by PBI was sufficient to address those concerns. In the event that PBI identified any issues, they typically provide a timely report of their concerns to the Board. Board staff clarified that chaperones are recommended in instances of inappropriate conduct with a patient. Two reports were reviewed by the Board that involved inappropriate conduct; however, the first individual was not a patient, and the second occurrence was not substantiated.

AAG Smith confirmed for the Board that the felony charges would remain on the physician's profile on the Board's website and that the Consent Agreement also included information regarding the conviction and will remain permanently on the physician's profile. Dr. Beyer commented that diagnostic radiology is a lower risk environment than were the physician to practice in other specialties. He also noted that most diagnostic radiologists typically have staff in their company.

**MOTION: Dr. Paul moved for the Board to accept the proposed Consent Agreement for Letter of Reprimand and Two Year Probation. Within six months, complete the pre-course and in-person CME course portion of the Professional Boundaries and Ethics: Extended Edition program offered by PBI, Inc. The CME hours shall be in addition to the hours required for license renewal. Prior to termination of Probation, Dr. Awad must submit a written request to the Board for release from the terms of the Board Order.**

**SECOND: Ms. Jones**

Dr. Bethancourt stated that he was greatly concerned regarding this physician based on the information presented in the case. Chairman Farmer stated that it is imperative that the information be available on the Board's website as it is the Board's duty to adequately protect the public.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Dr. Gillard, and Dr. Paul. The following Board members voted against the motion: Dr. Connolly, Chairman Farmer, and Ms. Jones. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 6-yay, 3-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

Chairman Farmer clarified that any further issues that arise regarding this physician will require the Board act expeditiously. He reiterated that the Board's action is public and will remain permanently on the physician's online profile. Dr. Gillard stated that he agreed with Dr. Bethancourt's comments, and stated that the conduct appeared to be egregious. Dr. Gillard also noted that the conviction did not involve the practice of medicine

3. MD-19-0453A, ELLIOT M. LIBLING, M.D., LIC. #20805

Dr. Libling addressed the Board during the Public Statements portion of the meeting. Monica Faria of the Physician Health Program also addressed the Board during the Public Statements.

**RESOLUTION: Accept the proposed Consent Agreement for License Reactivation and Five Year Probation to participate in the Board's PHP. The Probation shall include psychiatric monitoring and therapy with quarterly reports to the Board. After one year, Dr. Libling may petition the Board to request termination of the therapy requirement. In the event of a violation of the Order, Dr. Libling's license shall be summarily suspended pending a hearing for license revocation. Prior to termination of Probation, Dr. Libling must submit a written request to the Board for release from the terms of the Order.**

4. MD-17-0646A, MD-17-0701A, MD-17-0855A, NIKESH D. SETH, M.D., LIC. #44017

**RESOLUTION:** Accept the proposed Consent Agreement for a Letter of Reprimand and Two Year Probation. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing. Within thirty days of completing the Board ordered CME, the physician shall enter into a contract with a Board approved monitoring company to conduct periodic chart reviews at his expense. The chart reviews shall commence upon proof of successful completion of the CME and shall involve current patients' charts for care rendered after completion of the CME. After two consecutive favorable chart reviews, the licensee may request early termination of probation. Once the licensee has complied with the terms of Probation, he must affirmatively petition the Board to request that the Probation be terminated.

5. MD-18-0552A, SHEPHERD G. PRYOR, M.D., LIC. #33720

**RESOLUTION:** Accept the proposed Consent Agreement for a Letter of Reprimand and Five Year Probation to participate in PHP. Dr. Pryor's PHP participation shall be retroactive to November 7, 2018. Dr. Pryor shall comply with the return to work recommendations per the post-treatment discharge summary. The Probation shall include treatment with an addiction psychiatrist or addiction medicine specialist as recommended in the post-treatment discharge summary, and shall comply with any and all treatment recommendations. After one year, Dr. Pryor may petition the Board to request termination of the psychiatry treatment requirement. Prior to termination of Probation, Dr. Pryor must submit a written request to the Board for release from the terms of the Order.

## **Z. LICENSE APPLICATIONS**

### **i. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TO TAKE OTHER ACTION**

**MOTION:** Dr. Gillard moved for the Board to approve the license application in item numbers 2-5 and 7-9.

**SECOND:** Dr. Paul

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

1. MD-19-0476A, MATTHEW M. KREPS, M.D., LIC. #N/A

Ms. Jones noted that the applicant filed an addendum to the initial license application and questioned whether this was done at staff's request. Ms. Young reported that the applicant submitted the supplemental information on his own volition. Ms. Jones stated that was concerned regarding the reports of prior discipline and questioned whether the Board should invite the applicant to appear for a Licensing Interview.

Dr. Gillard noted that the applicant currently holds active licensure in two other states, and that the two malpractice cases reported were remote and the Board's Chief Medical Consultant did not request review of the patient care involved in those claims. Dr. Gillard observed that the Executive Director recommended granting licensure and noted that the applicant has completed his postgraduate training. Dr. Beyer stated that he shared Ms. Jones' concerns regarding the issues identified during the applicant's fellowship training. Ms. Young reported that the fellowship incident occurred in 2010, and that the physician has been in practice for 9 years without those problems resurfacing.

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

**SECOND:** Dr. Bethancourt

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, and Dr. Paul. The following Board member voted against the motion: Ms. Jones. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 8-yay, 1-nay, 0-abstain, 0-recuse, 2-absent.  
**MOTION PASSED.**

2. MD-19-0550A, MELODY J. GLENN, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
3. MD-19-0473A, BERNARD M. TORTORICE, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
4. MD-19-0522A, JOHN H. WILSON, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
5. MD-18-0989A, RICHARD O. ONI, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
6. THIS CASE WAS PULLED FROM THE AGENDA.
7. MD-19-0466A, ROBERT L. CIRILLO, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
8. MD-19-0146A, GREGORY L. THALKEN, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**
9. MD-19-0469A, DAVID L. WARD, M.D., LIC. #N/A  
**RESOLUTION: Approve the license application.**

**ii. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RENEWAL APPLICATION AND RECOMMENDED ADVISORY LETTER**

1. MD-18-1131A, JEFFREY K. WINGATE, M.D., LIC. #42278

Ms. Jones stated that she was concerned with the applicant's failure to disclose the New Mexico action on his license renewal application. Dr. Figge stated that he understands that the application questions are interpreted differently as many applicants do not understand the intricacies of the review process. He stated that the issuance of an Advisory Letter is an appropriate resolution to this case. Dr. Gillard stated that many fellow physicians do not know the requirements with regard to reporting misdemeanor or felony arrests to the Board. He stated that the Board needs to disseminate educational information to its regulated community relating to the requirements for reporting arrests to the Board.

Dr. Beyer stated that the application question is very clear and hard to misinterpret. He echoed Dr. Gillard's comments regarding the majority of the regulated community being unfamiliar with the law as it relates to what is required for reporting arrests to the Board.

Executive Director McSorley stated that the Agency's Strategic Plan is scheduled for the Board's review and discussion, and that the Board will have the ability to observe the education outreach that staff has undertaken for various groups and organizations. She stated that staff has prepared educational presentations and are available to perform presentations to any organization that would like to have them appear.

**MOTION: Dr. Gillard moved to grant the license renewal and issue an Advisory Letter for action taken in another jurisdiction and for failing to report a**

misdemeanor charge within ten days as required by law. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

**SECOND: Ms. Jones**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

2. MD-18-1145A, ROGER J. HUDGINS, M.D., LIC. #49811

**MOTION: Dr. Gillard moved to grant the license renewal and issue an Advisory Letter for failing to report a DUI in a timely manner. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.**

**SECOND: Dr. Paul**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

iii. **REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RENEWAL APPLICATION AND PROPOSED CONSENT AGREEMENT (Non-Disciplinary)**

1. MD-19-0608A, TOM R. FITCH, M.D., LIC. #17602

Dr. Connolly was recused from this case.

**MOTION: Dr. Gillard moved to grant the license renewal and accept the proposed Non-Disciplinary Consent Agreement for Practice Limitation.**

**SECOND: Dr. Figge**

Dr. Beyer spoke in favor of the motion and noted that this matter stemmed from the physician's filing of his license renewal application. He stated that physicians who remove themselves from active practice due to reasons that are health related, the Board would otherwise not be notified of this self-regulation and there would be no need for a Consent Agreement. Chairman Farmer stated that it is a matter of Board concern when good judgment is not used. Chairman Farmer opined that the physician appeared to be acting in a very responsible fashion.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board member was recused: Dr. Connolly. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 2-absent.**

**MOTION PASSED.**

iv. **REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING LICENSURE BY ENDORSEMENT PURSUANT TO A.R.S. § 32-1426(B) AND R4-16-201(F)**

**MOTION:** Ms. Jones moved to approve licensure by endorsement in item numbers 1 and 2.

**SECOND:** Dr. Paul

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

1. CARMELLA M. SEBASTIAN, M.D., LIC. #N/A

**RESOLUTION:** Approve licensure by endorsement.

2. VEENA RAIZADA, M.D., LIC. #N/A

**RESOLUTION:** Approve licensure by endorsement.

## **ACTION ON CASE(S)**

### **AA. APPROVAL OF DRAFT FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

1. MD-18-0534A, TRENT W. BATTY, M.D., LIC. #41253

**MOTION:** Dr. Gillard moved to approve the draft Findings of Fact, Conclusions of Law and Order for Letter of Reprimand with Practice Restriction and Minimum Two Year Probation, retroactive to January 18, 2019 with terms and conditions consistent with his Interim Order. Within six months, complete no less than 20 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding boundaries and ethics. The CME hours shall be in addition to the hours required for license renewal. Dr. Batty shall return to Acumen in July 2019 for re-evaluation and if the evaluation identifies additional treatment and/or therapy, Dr. Batty shall comply with any recommendations from the evaluation or assessment, subject to approval by the Board or its staff. Dr. Batty shall be responsible for all costs of the evaluations, assessment and any treatment recommended by the evaluators. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board and Dr. Batty's request for termination shall be accompanied by a recommendation from Acumen stating that monitoring is no longer required.

**SECOND:** Dr. Paul

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

2. MD-18-0251A, MD-18-0982A, WILLIAM T. MESHIER, M.D., LIC. #15822

**MOTION:** Dr. Gillard moved to approve the draft Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation with Practice Restriction. Dr. Meshier shall be prohibited from issuing medical marijuana certifications until CME is successfully completed and proof provided to Board staff. In addition, prior to termination of the Practice Restriction, Dr. Meshier shall provide the Board with evidence that he has reviewed and understands Arizona's requirements for issuing medical marijuana certifications and demonstrate that he is safe to issue such certifications, including written explanation regarding how he intends to comply with the medical marijuana certifications requirements in the State of Arizona. Within six months, complete the ProBE Program and complete no less than 10 hours of Board staff pre-approved Category I CME in medical marijuana or related topics. Once Dr. Meshier has completed the CME, he shall enter into a contract with a Board-approved monitoring company to perform periodic chart reviews of

medical marijuana certifications. Dr. Meshier shall be responsible for all costs associated with his Board Order. After Dr. Meshier has entered into the contract for monitoring, he may petition the Executive Director to lift the Practice Restriction. After two consecutive favorable chart reviews, the physician may petition the board for Probation termination. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board.

**SECOND: Dr. Beyer**

Dr. Gillard noted that once the CME is completed, the physician may petition the Executive Director to request termination of the practice restriction.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

3. MD-17-0973A, JOHN D. MARSHALL, M.D., LIC. #10961

**MOTION: Dr. Gillard moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.**

**SECOND: Ms. Jones**

Dr. Beyer recalled his vote against the motion for disciplinary action during the Formal Interview at the prior meeting. However, he stated that the Board's findings should stand and spoke in favor of the motion to approve.

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

## **OTHER BUSINESS**

### **BB. REQUEST FOR TERMINATION OF BOARD ORDER OR TAKE OTHER ACTION**

1. MD-13-0930A, MD-16-0072A, MD-16-0923A, MD-16-1286A, MD-17-0312A, MD-18-0307A, ROBERT A. WILLIAMS, M.D., LIC. #12287

Attorney Kraig Marton addressed the Board during the Public Statements portion of the meeting on behalf of Dr. Williams.

**MOTION: Dr. Figge moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).**

**SECOND: Dr. Paul**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

The Board entered into Executive Session at 12:43 p.m.

The Board returned to Open Session at 1:12 p.m.

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

**MOTION:** Dr. Figge moved for the Board to grant the physician's request to terminate the October 9, 2015 Board Order in case number MD-13-0930A.

**SECOND:** Dr. Gillard

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

Dr. Figge stated that there continue to be concerns regarding the remainder of the cases and proposed that the Board consider re-evaluation of the physician and returning the matters to SIRC for further consideration as to how the public is best protected.

**MOTION:** Dr. Figge moved for the Board to return cases MD-16-0072A, MD-16-0923A, MD-16-1286A, MD-17-0312A, and MD-18-0307A for further investigation including issuance of an Interim Order for Dr. Williams to complete a Board-approved late career/aging physician evaluation to better address whether he is safe to independently practice.

**SECOND:** Dr. Bethancourt

Dr. Beyer stated that he struggled with this case in that he did not find a clear pattern of deficient chart reviews when he reviewed the Board's materials. Dr. Figge stated that the Board's primary objective is to protect the public. He stated that additional investigation is warranted for the purposes of public safety. Chairman Farmer stated that he found the physician's recordkeeping issues to be a chronic problem and that it is difficult to determine the decision making process based on the records presented for the purposes of the chart reviews. Dr. Paul noted that a neuropsychological evaluation from 2018 indicated that the physician was not able to practice in a manner conducive to public safety.

In response to a Board member question, Board staff noted that the physician has already had significant discipline taken against his license and continues to have medical recordkeeping problems to the point that the MCs initially identify potential deviations, but then the physician provides rationale behind his chart notes and the MCs opinions are reversed. Board staff further noted that it appears the physician has benefited considerably by employing a practice monitor.

**MOTION:** Dr. Figge moved for the Board to return the case for further investigation including issuance of an Interim Order for Dr. Williams to complete a Board-approved late career/aging physician evaluation to better address whether he is safe to independently practice.

**SECOND:** Dr. Bethancourt

**VOTE:** The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board member abstained: Dr. Beyer. The following Board members were absent: Ms. Bain and Dr. Krahn.

**VOTE:** 8-yay, 0-nay, 1-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

## **CC. REQUEST FOR MODIFICATION OF BOARD ORDER**

1. MD-16-0856A, EHAB F. ABDALAH, M.D., LIC. #36239

Dr. Abdalah addressed the Board during the Public Statements portion of the meeting along with Attorney Camila Alarcon.

Board staff clarified that copies of the original scripts were obtained and it was determined that they were written by another physician with a similar name. Board staff summarized that Dr. Abdalah has requested that the Board accept the 7 CME credit

hours completed in billing and coding in satisfaction of his Board Order, and that if not approved, allow him to complete the remaining three hours online. Board staff stated that Dr. Abdalah's counsel has indicated that the physician has no plans of prescribing controlled substances and is amenable to modifying the Board's Order to include a Practice Restriction in lieu of the monitoring requirement.

**MOTION: Dr. Beyer moved for the Board to grant the request for Modification of the July 13, 2018, Board Order for Letter of Reprimand and Probation and accept the seven (7) hours the physician completed on billing and coding as a part of the PACE Prescribing Course in lieu of the ten (10) CME hours as required by the Order. In addition, the Consent Agreement shall be modified as follows: The requirement for chart reviews shall be eliminated and substituted with a Practice Restriction prohibiting Dr. Abdalah from prescribing controlled substances for the duration of probation. The Probation shall not terminate except upon request of the physician and approval by the Board. In the event that the physician requests Probation termination and the Practice Restriction is in effect at the time of the request, the Board may require any combination of examinations and/or evaluations in order to determine whether or not the physician is safe to prescribe controlled substances and the Board may continue the Practice Restriction or take any other action consistent with its authority.**

**SECOND: Dr. Gillard**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Dr. Gillard, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain and Dr. Krahn.**

**VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

**DD. GENERAL CALL TO THE PUBLIC**

There were no individuals that addressed the Board during the General Call to the Public.

**EE. ADJOURNMENT**

**MOTION: Ms. Jones moved for adjournment.**

**SECOND: Dr. Bethancourt**

**VOTE: The following Board members voted in favor of the motion: Dr. Bethancourt, Dr. Beyer, Dr. Connolly, Ms. Dorrell, Chairman Farmer, Dr. Figge, Ms. Jones and Dr. Paul. The following Board members were absent: Ms. Bain, Dr. Gillard, and Dr. Krahn.**

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

**MOTION PASSED.**

The Board's meeting adjourned at 3:51 p.m.



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Patricia E. McSorley, Executive Director