



Governor
Douglas A. Ducey

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

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Board Members
Scott Steingard, D.O., Pres
Douglas Cunningham, D.O., V.P.
Gary A. Erbstoesser, D.O.
Jerry G. Landau, J.D.
Martin Reiss, D.O.
Lew Riggs, Ed.D.
Vas Sabeeh, D.O.

Executive Director
Jenna Jones

**DRAFT MINUTES OF THE PUBLIC BOARD MEETING OF
THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY**

Saturday, April 9, 2016

BOARD MEMBERS PRESENT: Scott Steingard, D.O. President
Douglas Cunningham, D.O. Vice-President
Jerry G. Landau, J.D.
Vas Sabeeh, D.O.
Martin Reiss, D.O.
Gary A. Erbstoesser, D.O.
Lew Riggs, Ed.D.

STAFF / OTHERS PRESENT: Jenna Jones, Executive Director
Barbara Prah, D.O., Medical Consultant
Linda Kiesler, Investigations Manager
John O'Hair-Schattenberg, Investigator
Kathy Fowkes, Licensing Administrator
Jeanne Galvin, Assistant Attorney General
Mary Williams, Assistant Attorney General
John Tellier, Assistant Attorney General (phone)
Debbie Mitchell, CVR, Ottmar & Associates

1. CALL TO ORDER

Dr. Scott Steingard, Board President, called the meeting to order at 8:09 a.m. and read the Board's mission statement.

2. ROLL CALL AND REVIEW OF AGENDA

The Executive Director took the roll. Seven (7) board members were present, establishing quorum for the meeting. The Executive Director reviewed the agenda.

3. CALL TO THE PUBLIC

A. No medical students were in attendance.

B. The Board's custom is to ask members of the public to speak when the agenda item of interest to the person is called. Paul Giancola, Esq. requested and was granted an opportunity to speak. As the physician's representative, he requested a continuance for agenda item 8-F, which was noticed for hearing

after 1 p.m. Due to open meeting laws, the Board could not move the item. Mr. Giancola offered to return at 1 p.m. to make the request.

4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

A. February 27, 2016 Open Session

MOTION: Dr. Cunningham moved to approve the minutes. Dr. Reiss seconded. Dr. Erbstoesser and Mr. Riggs abstained.

VOICE VOTE: Motion carried 5-0-2.

B. February 27, 2016 Executive Session

MOTION: Dr. Cunningham moved to approve the minutes. Dr. Reiss seconded. Dr. Erbstoesser and Mr. Riggs abstained.

VOICE VOTE: Motion carried 5-0-2.

C. March 23, 2016 Teleconference Meeting

MOTION: Dr. Cunningham moved to approve the minutes. Mr. Riggs seconded. Dr. Sabeeh abstained.

VOICE VOTE: Motion carried 6-0-1.

5. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (C through F)

A. 3972, Paul Blumberg, DO, LIC. #1597

Dr. Erbstoesser was recused for this case.

Dr. Blumberg was not present. The Executive Director reported that Dr. Blumberg has an active license but last known information was Dr. Blumberg now resided in another state and no longer practiced in Arizona. However, his mailing address is in Arizona.

Dr. Sabeeh moved to enter Executive Session to obtain legal advice. Mr. Riggs seconded. The Board entered Executive Session at 8:16 a.m. and returned to Open Session at 8:20 a.m.

MOTION: Dr. Cunningham moved for non-disciplinary **LETTER OF CONCERN** for failure to provide appropriate after-care. Mr. Landau seconded.

ROLL CALL VOTE: The motion carried 5-1-1.

	Vote	Dr. Steingard	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh
YES	5		X		X	X	X	X
NO	1	X						
ABSTAIN/RECUSE	1			X				
ABSENT	0							

B. DO-14-0100A, J. Carvel Jackson DO, LIC. #2543

Dr. Jackson was not present. The Investigator reviewed the case. This complaint alleged billing irregularities as the result of an insurance company’s audit. The insurance company has now reported the case is closed.

MOTION: Dr. Sabeeh moved for **DISMISSAL**. Dr. Cunningham seconded.
VOICE VOTE: The motion carried 7-0.

C. DO-15-0206A, David Berg Nilsen DO, LIC. #005533

Dr. Nilsen was present. The complainant, who has moved out of state, was present by phone, read a statement and answered the Board’s questions. The Medical Consultant reviewed the case. This complaint alleged failure to follow up on an incidental finding on an MRI in an asymptomatic area, which four months later was diagnosed as liposarcoma. After the diagnosis, the patient took his own life. Autopsy revealed the lesion had not metastasized. Dr. Nilsen answered the Board’s questions.

MOTION: Mr. Landau moved for a **LETTER OF CONCERN** for failure to adequately review medical records.
VOICE VOTE: The motion carried 7-0.

D. DO-15-0266A, David Dean Minor DO, LIC. #2321

Dr. Erbstoesser was recused from this case.

Dr. Minor was not present. The Medical Consultant reviewed the case. The entire record was not sent, and no x-rays, diagnostic studies or referrals for consults were documented in the record.

MOTION: Dr. Cunningham motioned to move this case to an **INVESTIGATIVE HEARING**, and to obtain a complete record regarding the complaint, and for staff to complete a random 10 chart review and obtain CSPMP reports prior to Investigative Hearing. Dr. Reiss seconded.
VOICE VOTE: The motion carried 6-0-1.

6. REVIEWS OF EXECUTIVE DIRECTOR DISMISSALS

A. DO-15-0164A, Christine Marie Estrada DO, LIC. #5032

Dr. Estrada was not present. The Medical Consultant's report was reviewed by the Executive Director. Complaint alleged over-sedation of patient with Down Syndrome. Upon review of records, the Board determined patient management in this case was appropriate and there was no statutory violation.

MOTION: Mr. Landau moved to affirm the Executive Director Dismissal. Dr. Reiss seconded.

VOICE VOTE: The motion carried 7-0.

7. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E) ONLY.

A. DO-14-0213A, Brent Robert Korn DO, LIC. #4328

B. DO-14-0214A, Brent Robert Korn DO, LIC. #4328

C. DO-14-0215A, Brent Robert Korn DO, LIC. #4328

D. DO-14-0267A, Brent Robert Korn DO, LIC. #4328

E. DO-15-0010A, Brent Robert Korn DO, LIC. #4328

These cases were resolved with Item No. 12 of this agenda.

8. CONTINUATION OF REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855(E) ONLY.

F. DO-13-0140A, Chidozie Joshua Ononuju DO, LIC. #5007

Mr. Giancola represented Dr. Ononuju, who was not present. Mr. Giancola requested a continuance of the case. The Board discussed the request.

MOTION: Dr. Steingard moved to grant the continuance until the September 2016 meeting. Dr. Cunningham seconded.

VOICE VOTE: Motion carried 7-0.

G. DO-15-0096A, Theron Christopher Tilgner DO, LIC. #3501

Dr. Tilgner was present with attorney Rick Delo and was sworn in by the court reporter. The Medical Consultant reviewed the case. The complaint involved alleged failure to correctly position and align hardware involved in hip replacement surgery and alleged failure to recognize or correct the problem after several dislocations occurred. Dr. Tilgner answered the Board's questions. He denied placing the hip incorrectly.

The Complainant was present, was sworn in by the court reporter, and answered the Board's questions.

MOTION; Dr. Cunningham moved for a **LETTER OF CONCERN** for failure to provide proper after care, failure to document discussion of risks and benefits of surgery with patient and for Dr. Tilgner to obtain 20 hours of non-disciplinary CME in the areas of patient communication and record keeping, courses to be approved by the Executive Director and to be completed within six (6) months. Mr. Riggs seconded.

ROLL CALL VOTE: The motion carried 7-0.

	Vote	Dr. Steingard	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh
YES	7	X	X	X	X	X	X	X
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	0							

The Board recessed for a short break at 2:15 p.m. and returned to Open Session at 2:18 p.m.

H. DO-15-0118A, William Curtis Stonecipher DO, LIC. #0468

Dr. Stonecipher was present and was sworn in by the court reporter. The Executive Director reviewed the current status of the proposed Consent Agreement. Dr. Stonecipher requested to amend the proposed Consent Agreement to add a short list of scheduled drugs to the prescribing restriction exceptions. After discussion, the Board recommended Dr. Stonecipher prescribe other non-addictive medications or refer patients to specialists if restricted, scheduled drugs are needed.

MOTION: Mr. Landau moved to confirm previous offer of the interim Consent Agreement. Dr. Cunningham seconded.

ROLL CALL VOTE: The motion carried 7-0.

	Vote	Dr. Steingard	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh
YES	7	X	X	X	X	X	X	X
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	0							

I. DO-15-0228A, William Curtis Stonecipher DO, LIC. #0468

Dr. Stonecipher was present and remained sworn in. The Medical Consultant reviewed the case. The complaint alleged inappropriate prescribing. The events of this case occurred at around the same time as Case DO-15-0118A. The Board expressed concern regarding Dr. Stonecipher’s prescribing practices. These concerns are being addressed in the proposed Consent Agreement for the above case.

MOTION: Mr. Landau moved to add this case to the proposed Consent Agreement and if Dr. Stonecipher accepts the Consent Agreement, for him to returned a signed copy to the Board office by May 6, 2016. Dr. Cunningham seconded.

ROLL CALL VOTE: The motion carried 7-0.

	Vote	Dr. Steingard	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh
YES	7	X	X	X	X	X	X	X
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	0							

J. DO-13-0061A, Aaron Craig Love DO, LIC. #4373

Dr. Love was not present. This case was continued.

K. DO-13-0207A, Aaron Craig Love DO, LIC. #4373

Dr. Love was not present. This case was continued.

9. CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. §32-1855(E) AND (I).

A. DO-12-0114A, Brian Gallman DO, LIC. #4061

The Executive Director reviewed the status and Dr. Gallman’s request for extension of time to complete the CME.

MOTION: Mr. Landau moved to extend time to complete the CME obligation until July 1, 2016. Dr. Cunningham seconded.

VOICE VOTE: The motion carried 7-0.

10. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. § 32-1822; PERMITS PURSUANT TO A.R.S. § 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. § 32-1825 (C-D) AND A.A.C. R4-22-207.

A. DO-16-0018A, Michael Marx, LIC. #N/A

Dr. Marx was not present. This application review was continued.

B. DO-16-0019A, Amjad Saeed Akhtar, LIC. #N/A

Dr. Akhtar was not present.

MOTION: Mr. Landau moved for a substantive review request for Dr. Akhtar to attend the next regularly scheduled board meeting on May 21, 2016 for review of his application.

VOICE VOTE: The motion carried 7-0.

C. DO-16-0020A, Michael Clark Bagley LIC. #N/A

Dr. Bagley was present and answered the Board's questions.

MOTION: Dr. Cunningham moved to approve the application. Dr. Sabeeh seconded.

VOICE VOTE: The motion carried 7-0.

D. DO-16-0036A, William Lavor Cluff, LIC. #N/A

Dr. Cluff was present and answered the Board's questions.

Dr. Cunningham moved to enter Executive Session to review records and testimony regarding records which are confidential by statute. Mr. Landau seconded. The Board entered Executive Session with Dr. Cluff at 2:45 p.m. and returned to Open Session at 2:50 p.m.

MOTION: Dr. Reiss moved to approve the application. Dr. Cunningham seconded.

VOICE VOTE: The motion carried 7-0.

E. DO-16-0035A, Julie Rae Lynch, LIC. #N/A

Dr. Lynch was present and answered the Board's questions.

MOTION: Dr. Sabeeh moved to approve the application. Mr. Riggs seconded.

VOICE VOTE: The motion carried 7-0.

11. REVIEW, CONSIDERATION AND ACTION ON REPORTS FROM EXECUTIVE DIRECTOR, BOARD MEMBERS AND ASST ATTORNEY GENERAL

A. Report on E.D. Dismissed Complaints

Ms. Jones referred the Board to her report. There were no questions. 15 cases were dismissed between February 9, 2016 and April 1, 2016. 43 cases were resolved with an average of 251 days (included three compliance cases with over 1,300 days each).

B. President & Board Member Reports

Dr. Steingard, Mr. Landau, and Ms. Jones attended a meeting in Dallas, March 8th regarding the issues surrounding the Supreme Court ruling in *North Carolina vs FTC*.

The FSMB annual meeting will be held soon. Dr. Steingard, Dr. Cunningham, Mr. Landau, Dr. Reiss, Dr. Prah and Ms. Jones are attending.

Jonathan Jagoda, Director of FSMB's Federal Government Relations sent a letter to the Board to inform it that the Office of Surgeon General, Vice Admiral Vivek K. Murthy, MD, MBA, will be speaking in Arizona regarding misuse, use and diversion of opioids. Mr. Jagoda requested the Board identify a representative who would be able to participate in this event. The Board requested Dr. Prah represent the Board for this event. Dr. Prah accepted.

C. Executive Director Report

1. Financial Report

The Board is slightly under appropriation but upcoming expenses will likely exhaust any savings by the end of the fiscal year.

2. Other News

As of April 1, 2016 there are 155 pending complaints under investigation.

The next regularly scheduled Board meetings are May 21, 2016, July 30, 2016 and September 17, 2016.

D. Board may review, discuss and take action on request of retired status for:

1. Louis Cerato, DO, License No. 2415

MOTION: Dr. Cunningham moved to grant Dr. Cerato's request for Retired Status of his license. Dr. Reiss seconded.

VOICE VOTE: The motion carried 7-0.

2. Thomas Cerato, DO, License No. 1714

MOTION: Dr. Cunningham moved to grant Dr. Cerato's request for Retired Status of his license. Dr. Reiss seconded.

VOICE VOTE: The motion carried 7-0.

E. Legislative Update

Ms. Jones reviewed the status of the following bills.

1. HB2501: Health Regulatory Boards; Transfer DHS

As of March 2016, this bill was withdrawn by the Governor's office.

2. HB2502: Medical Licensure Compact

This bill is currently on hold in the Senate.

3. SB1443: Health Profession Regulatory Boards

The bill will require the Board to video or audio record public meetings and list non-disciplinary action on the website. The bill is currently pending a third read.

4. SB1283: Controlled Substances Prescription Monitoring Program

This bill was sponsored by Senator Kavanaugh. If passed, this bill would mandate usage of the CSPMP by October 1, 2017. However, there are a number of exceptions written in.

5. SB1445: Health Care Services; Patient Education

If passed, this would allow physicians to educate patients about off label uses of prescription drugs.

6. SB1524: Regulatory Actions; Limitation

Unless authorized by federal, state or local law an agency may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.

The Board recessed for Lunch at 11:38 a.m. and returned to Open Session at 12: 39 p.m.

12. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION INCLUDING POSSIBLE COUNTER-OFFER AND RESCISSION OF REFERRAL TO FORMAL HEARING RELATING TO OFFER OF SETTLEMENT SUBMITTED BY BRENT KORN, DO IN THE BELOW CASE NUMBERS:

- A. DO-11-0159A, Brent Robert Korn DO, LIC. #4328
- B. DO-13-0225A, Brent Robert Korn DO, LIC. #4328
- C. DO-14-0213A, Brent Robert Korn DO, LIC. #4328
- D. DO-14-0214A, Brent Robert Korn DO, LIC. #4328
- E. DO-14-0203A, Brent Robert Korn DO, LIC. #4328
- F. DO-14-0215A, Brent Robert Korn DO, LIC. #4328
- G. DO-14-0267A, Brent Robert Korn DO, LIC. #4328
- H. DO-15-0010A, Brent Robert Korn DO, LIC. #4328

Dr. Korn was present with counsel Paul J. Giancola. Jeanne Galvin, A.A.G. and Mary Williams, A.A.G. were present as representing the state. John Tellier, A.A.G. was present by phone as independent legal counsel for the Board. Mr. Giancola addressed the Board and proposed a consent agreement for the Board's consideration. Dr. Korn answered the Board's questions regarding his current practice in Internal Medicine and preceptorship in homeopathic medicine with a licensed homeopathic physician.

Ms. Williams noted that two of the above cases have been referred to Formal Hearing for the purpose of revocation of license. One other case for lyme disease is currently being appealed by Dr. Korn to the Court of Appeals. Ms. Williams stated there have been many serious deviations from the standard of care in the above noted cases and Mr. Giancola's proposed consent agreement is not sufficient action.

The Board expressed concern about any consent agreement that did not include an active suspension, and there is sufficient evidence for a strong case for revocation. The Board feels strongly about moving forward to seek revocation, but would accept a surrender of license or consider a consent which included an active suspension.

Board recessed for a short break at 10:14 a.m. and returned at 10:24 a.m.

Mr. Landau moved to enter Executive Session to obtain legal advice. Dr. Cunningham seconded. Motion passed 7-0. The Board entered Executive Session at 10:24 a.m. and returned to Open Session at 10:34 a.m.

Mr. Giancola said Dr. Korn would be agreeable to a suspension for a period of time and other terms as the Board outlined. The Board discussed the case and terms of a consent agreement.

The Board recessed for a short break at 10:50 a.m. and returned to Open Session at 10:57 a.m.

MOTION: Mr. Landau moved to offer a global Consent Agreement for all of the cases that includes the following terms:

1. License is suspended for four (4) years;
2. Dr. Korn will withdraw his appeal in case no. DO-11-0159A; and
3. Surrender his homeopathic preceptorship and not apply for another preceptorship.

In addition, and;

Prior to returning to practice, Dr. Korn will:

4. Successfully complete CPEP or an equivalent assessment program approved by the Executive Director, and complete all recommendations made by the program,
5. Successfully complete PROBE or another approved equivalent CME course in ethics approved by the Executive Director.

And;

If returning to practice, Dr. Korn will:

6. Be placed on Probation for a period of 5 years, terms to include:
 - a. Restriction on practicing Pediatrics or treating children, Alternative and/or Homeopathic Medicine, Oncology, and treating Lyme disease;
 - b. Subjected to practice monitor, with quarterly audits and reporting by a practice monitor who is approved by the Executive Director;
 - c. Maintain CME during the period of suspension; and

- d. Assessed a civil penalty of \$1,000 payable within the next 180 days from the effective date of Consent Agreement.

Dr. Cunningham seconded.

ROLL CALL VOTE: The motion carried 6-1.

	Vote	Dr. Steingard	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh
YES	6		X	X	X	X	X	X
NO	1	X						
ABSTAIN/RECUSE	0							
ABSENT	0							

The Board directed staff to draft the Consent Agreement and bring it back to the Board for consideration.

13. ADJOURNMENT

The Board adjourned at 3:10 p.m.