



Governor
Douglas A. Ducey

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

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Gary A. Erbstoesser, D.O.
Jonathan A. Maitem, D.O.
Martin Reiss, D.O.
Lew Riggs, Ed.D.
Christopher Spiekerman, 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 1, 2017

BOARD MEMBERS PRESENT: Douglas Cunningham, D.O. President
Jerry G. Landau, J.D., Vice-President
Gary A. Erbstoesser, D.O.
Christopher Spiekerman, D.O. (morning only)
Lew Riggs, Ed.D. (afternoon only)

BOARD MEMBERS ABSENT: Jonathan A. Maitem, D.O.
Martin Reiss, D.O.

STAFF / OTHERS PRESENT: Jenna Jones, Executive Director
Barbara Prah, D.O., Medical Consultant
Rachel Shepherd, Investigations Manager
John O'Hair-Schattenberg, Investigator
Kathy Fowkes, Licensing Administrator
Jeanne Galvin, Assistant Attorney General
Cindy Bachman, CVR, Ottmar & Associates

1. CALL TO ORDER not before 8:08 a.m.

Dr. Douglas Cunningham, Board President, called the meeting to order at 8:05 a.m. and read the Board's mission statement: "The mission of the Board is to protect the public by setting educational and training standards for licensure, and by reviewing complaints made against osteopathic physicians, interns, and residents to ensure that their conduct meets the standards of the profession, as defined in law (A.R.S. § 32-1854)."

2. ROLL CALL AND REVIEW OF AGENDA

The Executive Director took the Roll. Four (4) board members were present, establishing quorum for the meeting. The Executive Director reviewed the agenda.

3. CALL TO THE PUBLIC

- A. Dr. Cunningham welcomed the Medical Students from Arizona College of Osteopathic Medicine at Midwestern University, A.T. Still University Kirksville College of Osteopathic Medicine and A.T. Still University School of Osteopathic Medicine in Arizona.
- 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. Members of the public who wanted to address the Board on an issue not on the agenda were invited to speak prior to the adjournment.

No public members addressed the Board.

4. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

February 25, 2017 Open Session

MOTION: Dr. Erbstoesser moved to approve the minutes. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

February 25, 2017 Executive Session

MOTION: Mr. Landau moved to approve the minutes. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

January 21, 2017 After 2 p.m. Open Session – Elections

MOTION: Dr. Spiekerman moved to approve the minutes. Dr. Erbstoesser seconded.

VOICE VOTE: Motion carried unanimously.

March 22, 2017 Teleconference Session

MOTION: Dr. Erbstoesser moved to approve the minutes. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried unanimously.

5. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT

A.R.S. § 32-1855 (D).

A. Brett Willden, DO

Case No. DO-16-0185A

License No. 3586

Respondent was present and confirmed that he was not involved in care of the patient, and that the nurse practitioner treated the patient.

MOTION: Dr. Erbstoesser moved for **Dismissal**. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

The Board directed staff to refer this case to the Nursing Board.

- B. Jaldeep Daulat, DO Case No. DO-16-0227A License No. 2315

Respondent was not present. The Board discussed the reviewer recommendations. The Board was satisfied with the care of the patient, but was concerned about the Respondent's documentation.

MOTION: Dr. Spiekerman moved to issue a **Letter of Concern** for lack of documentation.

VOICE VOTE: The motion carried unanimously.

- C. James Clark, DO Case No. DO-16-0003A License No. 005609

Respondent was not present. The Board reviewed the reviewers' recommendations.

MOTION: Dr. Spiekerman moved for Investigative Hearing. Dr. Erbstoesser seconded.

VOICE VOTE: The motion carried unanimously.

- D. Barbara Jordan, DO Case No. DO-16-0069A License No. 3661

Respondent was not present. The Board reviewed the reviewers' recommendations.

MOTION: Mr. Landau moved for **Dismissal**. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

6. REVIEWS OF EXECUTIVE DIRECTOR DISMISSALS - (CONTINUATION OF REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (D))

- A. John Deuel, DO Case No. DO-16-0198A License No. 4459

The Respondent was not present. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Spiekerman moved to uphold the Executive Director Dismissal. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

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

- A. Sean Sackett, D.O. Case No. DO-16-0200A License No. 3872

The Respondent was present and was sworn in by the court reporter. The complaint came from the Arizona Pharmacy Board and alleged inappropriate prescribing. The Medical Consultant reviewed ten patient charts. The Respondent answered the Board's questions. The Board expressed concern regarding the Respondent's failure to provide a written response to the allegations in the complaint after numerous requests by the Board, the large quantities of opioids being prescribed to patients, failure to act on inconsistent labs, and continuing to prescribe opioids to a patient who admitted to using alcohol.

Dr. Spiekerman moved to enter Executive Session to obtain legal advice. Dr. Erbstoesser seconded. The Board entered Executive Session at 10:03 a.m. and returned to Open Session at 10:10 a.m.

MOTION: Mr. Landau moved for a finding of Unprofessional Conduct for violations of A.R.S. § 32-1854(5), (6) and (38) for the following:

1. Prescribing larger amounts of opioids than required for patients EF, JB, and RR,
2. Urine drug screens were at times inconsistent and not noted in the patient’s medical records for patient AR,
3. Pharmacy audits were not ordered and reviewed for patients JG, AR, and RR on regular basis,
4. No controlled substance agreement was in the chart for patient JG,
5. Prescribing opioids, benzodiazepines and muscle relaxants at the same time to the same patient,
6. Failing to follow through on diagnostic studies and referrals to specialists to determine the underlying cause of the condition for patients JG and DF,
7. Storing controlled substances and dispensing them from office to patient AR, JD and RR without a dispensing registration,
8. Prescribing oxycodone, oxycontin, and suboxone at the same time to patient JB,
9. Continuing to prescribe oxycodone and oxycontin to a patient who indicated he was obtaining similar drugs illegally and not by prescription for patient JB,
10. Prescribing multiple drugs when Respondent knew patient was using/abusing alcohol,
11. Inadequate physical exams,
12. Not using sub-specialists when necessary, and
13. Practicing below the community standard and in a manner that endangers the public health.

Dr. Spiekerman second.

ROLL CALL VOTE: The motion carried 4 – 0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X				X
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X	X	X	

MOTION: Mr. Landau moved to issue a **Decree of Censure** for improper prescribing practices and a **five (5)-year Probation**, with terms to include:

1. Practice restricted and limited in that Respondent is prohibited from prescribing class 2, 3, and 4 controlled substances and Suboxone,
2. Prohibited from recommending marijuana,
3. Obtain practice assessment from PACE or CPEP or an approved similar organization in the areas of family practice and opioid prescribing, scheduled in the next sixty (60) days and to be completed within six (6) months,
4. Subject to chart reviews by the Board’s medical investigator for times at the discretion of the Board and/or the Executive Director during the five (5) year probation,
5. Appear before the Board at a regularly scheduled meeting in nine (9) months,
6. \$1,000 civil penalty to be paid within sixty (60)days, and
7. Respondent is responsible for costs associated with fulfillment of this order.

Dr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 4 – 0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X				X
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X	X	X	

B. Steven B. Chintis, D.O. Case No. DO-16-0164A License No. 2583

This case was continued.

C. Drew Durbin, DO Case No. DO-16-0190A License No. 4274

The Respondent was present with attorney Mr. Campbell and was sworn in by the court reporter. The Medical Consultant reviewed the case. The complaint alleged failure to follow up on an abnormal CT scan. The Respondent answered the Board’s questions. The Board expressed concern regarding the specialist’s failure to follow up on the CT scan but felt Dr. Durbin did not fall below the standard of care in his treatment of the patient.

MOTION: Dr. Erbstoesser moved for **Dismissal**. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

D. Michael Brady, DO Case No. DO-16-0220A License No. 006083

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case. The complaint alleged failure to supervise a P.A. who did not maintain the standard of care and failed to document appropriately. The Respondent answered the Board's questions. He explained the Electronic Medical Records system was not programmed to allow him to review the P.A.'s records.

MOTION: Dr. Erbstoesser moved for **Dismissal**. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

The Board recommended staff write a letter to Integrated Medical Services regarding their failure to allow for appropriate supervision of Physician Assistants.

E. Roy Watts, DO Case No. DO-16-0083A License No. 2156

The Respondent was present with attorney Stephen Myers and was sworn in by the court reporter. The Medical Consultant reviewed the case. The complaint alleged prescribing controlled substances to a family member. Mr. Myers addressed the Board and the Respondent answered the Board's questions. The Board expressed concern regarding the amount of opioids being prescribed.

The Board directed staff to do a 15-chart review and tabled the case until the July 2017 meeting.

F. Molly Finley, D.O Case No. DO-14-0044A License No. 4457

The Respondent was present and was sworn in by the court reporter. The Executive Director reviewed the case. The case was opened after self-report of a DUI.

Dr. Cunningham moved to enter Executive Session to review records and receive testimony regarding records which are confidential by statute. Dr. Erbstoesser seconded. The Board entered Executive Session with Respondent at 11:18 a.m. and returned to Open Session at 11:45 a.m.

MOTION: Dr. Erbstoesser moved to accept what was discussed in Executive Session. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

The Board recessed for lunch at 11:57 a.m. and returned to Open Session at 1:00 p.m.

Dr. Spiekerman departed the meeting at 11:57 a.m.

Mr. Riggs was present telephonically at 1:00 p.m.

**8. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E).
 (Continued from Section 7)**

Cases in this section were called after 1 p.m.

At 1:00 p.m., the Executive Director took the Roll. Dr. Cunningham, Mr. Landau, Dr. Erbstoesser and Mr. Riggs were present, establishing quorum for the meeting.

G Bryan Friedman, D.O. Case No. DO-15-0260A License No. 006111

The Respondent was present and was sworn in by the court reporter. Dr. Stephen Perlmutter, attorney for the complainant, was present. The complaint was filed on behalf of Marvin Borsand, D.O. The Investigator reviewed the non-medical aspects of the case. The Medical Consultant reviewed the charts. Dr. Friedman answered the Board’s questions. Dr. Perlmutter gave a brief statement to the Board. After discussion and consideration, the Board determined this was a civil matter which the complainant was inappropriately attempting to have adjudicated before the Board.

MOTION: Mr. Landau moved for **Dismissal**. Dr. Erbstoesser seconded.

ROLL CALL VOTE: The motion carried 4-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X		X		
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X		X	X

H. Benjamin Shnurman, DO Case No. DO-16-0249A License No. 4389

The Respondent was present and was sworn in by the court reporter. The Investigator reviewed the case, which was opened after receiving notification of the Respondent’s voluntary surrender of license for cause in another state. The Board asked Respondent about his failure to disclose the pending matter on his most recent license renewal. The Respondent answered the Board’s questions. The Board expressed concerns regarding the underlying actions leading to the Illinois surrender and the failure to disclose the pending matter on the most recent license renewal.

Dr. Cunningham moved to enter Executive Session to obtain legal advice. Dr. Erbstoesser seconded. The Board entered Executive Session at 1:30 p.m. and returned to Open Session at 1:38 p.m.

MOTION: Mr. Landau moved to offer Respondent the opportunity to enter into a Consent Agreement for Surrender of License, to be signed within two (2) weeks of receipt of the Consent Agreement; further, if the Consent Agreement is not accepted, to refer the case for formal administrative hearing for the purpose of Revocation. Dr. Erbstoesser seconded.

ROLL CALL VOTE: The motion carried 4-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X		X		
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X		X	X

I. James Kao, DO

Case No. DO-16-0067A

License No. 005448

The Respondent was present and was sworn in by the court reporter. The Investigator reviewed the case, which was opened after receiving notice of disciplinary action by the California Board. Notice was received from FSMB that the Respondent's license in Colorado was disciplined due to the California Order. The Respondent answered the Board's questions and stated he has completed the CME and is in compliance with the other terms of the California Order to date.

MOTION: Dr. Erbstoesser moved for **Dismissal**. Mr. Landau seconded.

ROLL CALL VOTE: The motion carried 4-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X		X		
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X		X	X

J. Joseph Janzer, DO

Case No. DO-16-0144A

License No. 4221

The Respondent was present with attorney Patrick White and was sworn in by the court reporter. The Medical Consultant reviewed the case. Dr. Janzer answered the Board's questions. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Erbstoesser moved for **Dismissal**. Mr. Riggs seconded.
ROLL CALL VOTE: The motion carried 4-0.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Maitem	Dr. Spiekerman
YES	4	X	X	X		X		
NO	0							
ABSTAIN/RECUSE	0							
ABSENT	3				X		X	X

K. Rose M. Gonzalez-Weaver, DO Case No. DO-15-0153A License No. 2685

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case which was opened after receiving notice of non-compliance with a disciplinary order issued by the Texas Licensing Board. Dr. Gonzalez-Weaver answered the Board’s questions.

Mr. Landau moved to enter Executive Session to review records and receive testimony regarding records which are confidential by statute. Dr. Erbstoesser seconded. The Board entered Executive Session with Respondent at 2:28 p.m. and returned to Open Session at 2:45 p.m.

MOTION: Dr. Cunningham moved for an **Interim Order** requiring the following:

1. Psychiatric evaluation by a board certified psychiatrist approved by the Executive Director to be scheduled in the next 60 days and completed within six (6) months,
2. A copy of the report of the history and physical exam just completed. If the report is not adequate to answer the Board’s questions, another exam by a board certified physician approved by the Executive Director will be required in the next 60 days and completed within six (6), and
3. Practice evaluation by CPEP or PACE, to be scheduled in the next 60 days and completed within six (6) months.

VOICE VOTE: The motion carried 4-0.

The Board directed staff to place this case on the November 2017 agenda.

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. Andres Abreu Case No. DO-16-0265A License No. n/a

Dr. Abreu withdrew the application.

B. Roberta Ekholm Case No. DO-17-0055A License No. n/a

The Applicant was present. The Executive Director reviewed the application. The Applicant answered the Board's questions.

MOTION: Dr. Erbstoesser moved to approve the license application. Mr. Landau seconded.

VOICE VOTE: The motion carried unanimously.

C. Joseph Paulisin Case No. DO-17-0057A License No. n/a

The Applicant was present with his wife. The Executive Director reviewed the application. The Applicant and his wife answered the Board's questions.

MOTION: Dr. Erbstoesser moved to approve the license application. Dr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

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

A. Report on ED Dismissed Complaints

Ms. Jones reported that there were 17 Executive Director Dismissals between February 21, 2017 and March 28, 2017. Also during this time period, the Board resolved a total of 34 cases. She provided a written report to the Board members with the statutorily required information.

B. President & Board Member Reports

Dr. Erbstoesser, Dr. Cunningham and Mr. Landau confirmed they were planning to attend the upcoming FSMB meeting.

C. Executive Director Report

Ms. Jones submitted the report to the Board.

1. Financial Report

Ms. Jones submitted the report to the Board.

2. Summary of current events that affect the Board

No matters were discussed.

3. Legislation Update

a. SB1028 Osteopathic Board; continuation

Ms. Jones reported this bill has passed the Senate and the House, but that the House amended the term to be ten years instead of eight years. The bill now needs to go back to Senate for concurrence.

b. SB1435 Osteopath; fingerprinting

This bill is expected to be on the next Rules agenda within a week or so.

c. SB1452 Health profession regulatory boards

This bill is proceeding.

d. SB1437 Agencies; review; GRRC; occupational regulation

This bill is proceeding.

e. HB2372 Public Benefits, fee waivers

This bill is proceeding. This bill will affect the Board's income regarding PGT permits and new licensees as these applicants that have income less than 200% of poverty level will have fee(s) waived. The bill's sponsor has refused to speak to Ms. Jones.

D. Board may review, discuss and update regarding the Governor's Executive Order 2017-02.

This Executive Order addresses eliminating Rules that are redundant with the intention to reduce regulation. Ms. Jones requested approval from the Board to hold two meetings for the public to weigh in. Ms. Jones reported that the AOMA has agreed to include this information in their newsletter. The Board agreed to Ms. Jones' proposals.

E. Board may review, discuss and update regarding the Governor's Executive Order 2017-03.

Ms. Jones requested to have the Board's Legislative and Rules Committee help formulate a response to this. Dr Cunningham and Mr. Landau are members of this committee. Dr. Spiekerman agreed to be a third member and Mr. Landau agreed to chair the committee.

11. DISCUSSION, CONSIDERATION AND ACTION INCLUDING POSSIBLE SUMMARY SUSPENSION OF LICENSE

Related to Case No. DO-16-0249A, based upon false and/or misleading information on renewal application and surrender of Illinois license.

A. DO-16-0249A

Benjamin Z. Shnurman, DO

License No. 4389

This case was heard under Agenda item 8-H.

12. ADJOURNMENT

The meeting adjourned at 3:08 p.m.