



Governor
Douglas A. Ducey

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

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

Executive Director
Jenna Jones

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

Saturday, February 25, 2017

BOARD MEMBERS PRESENT: Douglas Cunningham, D.O. President
Jerry G. Landau, J.D., Vice-President
Gary A. Erbstoesser, D.O.
Martin Reiss, D.O.
Vas Sabeeh, D.O.
Christopher Spiekerman, D.O.

BOARD MEMBERS ABSENT: Lew Riggs, Ed.D.

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
John R. Tellier, Assistant Attorney General
Robin Jasper, RPR, Ottmar & Associates
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. Six (6) 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

- A. January 21, 2017 Open Session

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

VOICE VOTE: Motion carried unanimously.

- B. January 21, 2017 Executive Session

MOTION: Dr. Reiss 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).

Case Reviews

- A. Russell Hisscock, DO Case No. DO-16-0059A License No. 4374

The Respondent was not present.

MOTION: Dr. Reiss moved for Dismissal. Dr. Spiekerman seconded.

VOICE VOTE: 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 (C through F))

- A. Leon Malachinski, DO Case No. DO-16-0109A License No. 006343

The Respondent was not present. The Complainant was present by phone. The Medical Consultant reviewed the case. The complaint alleged sub-standard care. The Complainant addressed the Board.

After discussion and consideration, the Board determined there was no statutory violation.

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

VOICE VOTE: The motion carried unanimously.

B. Robert Fincher, DO Case No. DO-16-0192A License No. 006167

The Respondent was not present.

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

VOICE VOTE: The motion carried unanimously.

C. James Skinner, DO Case No. DO-16-0224A License No. 1643

The Respondent was not present. The Complainant was present. The Medical Consultant reviewed the case. The complaint alleged Respondent prescribed medication to which she was allergic. The Board reviewed the prescription bottles that the complainant presented at the hearing and confirmed the Respondent did not prescribe the medication to the patient.

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

VOICE VOTE: The motion carried unanimously.

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

A. James Cerneka, DO Case No. DO-16-0126A License No. 3664

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case. The case was opened upon notice of a settlement on Respondent's behalf. Respondent answered the Board's questions. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Sabeeh moved for Dismissal. Dr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

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

This case was continued.

- C. Brian McWhorter, DO Case No. DO-15-0180A License No. 005584

The Respondent was present with counsel Charles A. Struble and was sworn in by the court reporter. The Medical Consultant reviewed the case, which involved allegations of failure to diagnose and failure to follow-up appropriately on radiology reports. The Respondent answered the Board's questions.

MOTION: Dr. Sabeeh moved for Dismissal. Dr. Reiss seconded.

ROLL CALL VOTE: Motion carried 6-0.

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

- D. Julie Lynch, DO Case No. DO-16-0134A License No. 006758

Respondent was not present.

MOTION: Mr. Landau moved to refer the case to the Office of Administrative Hearings for the purpose of revocation. Dr. Sabeeh seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

The Respondent arrived in the afternoon.

Mr. Landau moved to enter Executive Session to obtain legal advice. Mr. Spiekerman seconded. The Board entered Executive Session at 3:15 p.m. and returned to Open Session at 3:22 p.m.

MOTION: Mr. Landau moved to rescind his previous motion. Dr. Sabeeh seconded.

VOICE VOTE: The motion carried unanimously.

The Investigator reviewed the case. The complaint alleged inappropriate prescribing, prescribing controlled substances for family members and obtaining a license by fraud or misrepresentation.

Upon questioning, the Respondent became angry and spoke loudly over the Board members' attempts to hear the case. She refused or was unable to answer the Board's questions.

Mr. Landau moved to enter Executive Session to obtain legal advice. Mr. Spiekerman seconded. The Board entered Executive Session at 3:32 p.m. and returned to Open Session at 3:44 p.m.

MOTION: Due to the Respondent's conduct, demeanor, and attitude, the Board determined the Respondent was not safe to practice medicine, therefore, Mr. Landau moved for a Summary Suspension of License. Mr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

MOTION: Mr. Landau moved to refer the case to the Office of Administrative Hearings for formal hearing on Revocation for violation of A.R.S. § 32-1854 (9), (18) and (25). Dr. Sabeeh seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

E. David Minor, DO

Case No. DO-15-0266A

License No. 2321

Dr. Erbstoesser was recused.

The Respondent was present and was sworn in by the court reporter. The Complainant was not present. The Medical Consultant reviewed the case and reported on a chart review. The complaint alleged unsafe prescribing practices. The Respondent answered the Board's questions. The Board expressed concern regarding the amounts of pain medications being prescribed and the lack of documentation in the charts regarding specialist consults, CSPMP reports, pain contracts, and urine drug screens.

The patient (who was not the complainant) was present and was sworn in by the Court Reporter. She addressed the Board.

Dr. Cunningham moved to enter Executive Session to obtain legal advice. Dr. Sabeeh seconded. The Board entered Executive Session at 10:49 a.m. and returned to Open Session at 10:55 a.m.

MOTION: Mr. Landau moved for a finding of Unprofessional Conduct ARS 32-1854: (6) & (38) for the following:

1. No controlled substance agreements
2. No urine drug screens
3. No pharmacy audits were documented
4. On multiple occasions, prescription combinations of opioids and benzodiazepines.
5. Amounts of the drugs being prescribed

Dr. Sabeeh seconded.

ROLL CALL VOTE : The motion carried 5-0.

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

MOTION: Mr. Landau moved for a 5-year Probation to include the following terms:

1. Restricted from prescribing schedule 2, 3, or 4 drugs;
2. Restricted from recommending medical marijuana;
3. Obtain a practice assessment through CPEP or PACE, with focus on opioids, benzodiazepines and prescribing practices to be completed by September 1, 2017 with all costs incurred by the Respondent.

Dr. Sabeeh seconded.

ROLL CALL VOTE: The motion carried 5-0.

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

The Board recessed for a break at 11:04 a.m. and returned to Open Session at 11:14 a.m.

F. Christian Peters, DO Case No. DO-16-0028A License No. 1203

The Respondent was present with attorney Peter Akmajian and was sworn in by the court reporter. The Medical Consultant reviewed the inspection results the Board requested at a previous meeting. The Executive Director reviewed the status of the case. Dr. Peters is no longer prescribing scheduled drugs and surrendered his DEA registration. He has limited his practice to osteopathic manipulative treatment (OMM).

MOTION: Mr. Landau moved for non-disciplinary Letter of Concern for inappropriate prescribing practices; and non-disciplinary Consent Agreement to obtain Board approval before applying for a DEA registration and to limit his practice to OMM. Dr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

G. Rose Gonzalez-Weaver, D.O. Case No. DO-15-0153A License No. 2685

This case was continued.

The Cases in Agenda Section 8 were called after 1:00 p.m.

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

H. Joseph Janzer, DO Case No. DO-16-0144A License No. 4221

This case was continued.

I. Randolph Scott, DO Case No. DO-16-0167A License No. 2108

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed

the case. The case was opened upon notice of a settlement on Respondent’s behalf. The Respondent answered the Board’s questions. After discussion and consideration, the Board determined there was no statutory violation.

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

ROLL CALL VOTE: The motion carried 6-0.

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

J. Diana Easton, DO

Case No. DO-16-0154A

License No. 2129

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case, which alleged inappropriate prescribing and patient abandonment. The Respondent answered the Board’s questions.

MOTION: Mr. Landau moved for 20 hours of non-disciplinary Continuing Medical Education in the area of opioid prescribing to be approved by the Executive Director and to be completed in addition to the renewal requirement within nine months. Dr. Sabeeh seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

K. Suzanne Bentz, DO Case No. DO-15-0227A License No. 2866

The Respondent was present with attorney Andy Plattner and was sworn in by the court reporter. This case was continued from a previous meeting. The Medical Consultant reviewed new information and answered the attorney’s concerns. The attorney addressed the Board. The Respondent read a prepared statement.

Mr. Landau moved to enter Executive Session to obtain legal advice. Dr. Reiss seconded. The Board entered Executive Session at 2:04 p.m. and returned to Open Session at 2:14 p.m.

The Respondent answered the Board’s questions. After discussion and consideration, the Board determined there was no statutory violation.

MOTION: Dr. Sabeeh moved for Dismissal. Dr. Reiss seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

L. Edmund Krasinski, DO Case No. DO-16-0105A License No. 2544

The Respondent was present and was sworn in by the court reporter. The Medical Consultant reviewed the case. The complaint involved privileges at a facility.

Mr. Landau moved to enter Executive Session to review records and receive testimony regarding records which are confidential by statute. Dr. Spiekerman seconded. The Board entered Executive Session with Respondent at 2:39 p.m. and returned to Open Session at 2:51 p.m.

MOTION: Dr. Sabeeh moved for Dismissal. Mr. Landau seconded for the purpose of discussion. After discussion, the motion was withdrawn.

MOTION: Mr. Landau moved for a non-disciplinary Letter of Concern for possibly arriving at work at a hospital while impaired. Dr. Cunningham seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

M. David Kent, DO

Case No. DO-15-0168A

License No. 4518

The Respondent was present by phone and was sworn in by the court reporter. The Investigator reviewed the case. The Respondent answered the Board's questions. The complaint alleged failure to provide medical records. The Respondent stated he was constrained by a bankruptcy court and was unable to access the records.

MOTION: Dr. Sabeeh moved for Dismissal. Dr. Spiekerman seconded.

ROLL CALL VOTE: The motion carried 4-2.

	Vote	Dr. Cunningham	Dr. Erbstoesser	Mr. Landau	Dr. Reiss	Mr. Riggs	Dr. Sabeeh	Dr. Spiekerman
YES	4		X		X		X	X
NO	2	X		X				
ABSTAIN/RECUSE	0							
ABSENT	1					X		

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), MAY INCLUDE REQUESTS FOR REVIEW OR REHEARING.

A. Hudson Lee, DO

Case No. DO-15-0262A

License No. 4625

The Respondent was not present. The Executive Director reviewed the rehearing request.

MOTION: Mr. Landau moved to deny the request. Dr. Cunningham seconded.

VOICE VOTE: The motion carried unanimously.

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. Laura Bowen Case No. DO-17-0030A License No. N/A

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

MOTION: Dr. Sabeeh moved to approve the license. Dr. Spiekerman seconded.

VOICE VOTE: Motion carried with 5 Yays. Mr. Landau said Nay.

The Board recessed for Lunch at 12:13 p.m. and returned to Open Session at 1:04 p.m.

B. James Garland Case No. DO-17-0033A License No. N/A

The applicant was present. The Executive Director reviewed the application.

Mr. Landau moved to enter Executive Session to review records and receive testimony regarding records which are confidential by statute. Dr. Spiekerman seconded. The Board entered Executive Session with Respondent at 11:22 a.m. and returned to Open Session at 11:31 a.m.

Mr. Landau moved to enter Executive Session to obtain legal advice. Dr. Reiss seconded. The Board entered Executive Session at 11:34 a.m. and returned to Open Session at 11:37 a.m.

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

VOICE VOTE: Motioned 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 January 18, 2017 and February 21, 2017. Also during this time period, the Board resolved a total of 36 cases. She provided a written report to the Board members with the statutorily required information.

B. President & Board Member reports

There were no reports this month.

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

4. Ms. Jones submitted a report to the Board on the status of legislation affecting the Board.

- a. SB1028 Osteopathic Board; continuation
- b. SB1435 Osteopath; fingerprinting
- c. SB1452 Health profession regulatory boards
- d. SB1437 Agencies; review; GRRC; occupational regulation

D. Scott Steingard, DO to provide report on recent AAOE meeting.

Dr. Steingard reported the AAOE meeting was well attended. There were two lectures on opioid prescribing and discussions regarding other topics for future lectures including physician wellness/burnout. Many Boards are struggling with significant questions about the North Carolina decision and its impact. The next meeting is in Ft Worth, Texas.

12. REVIEW, CONSIDERATION AND ACTION ON MATTERS HEARD AT THE OFFICE OF ADMINISTRATIVE HEARINGS (9:00 AM)

A. Joshua Tauber DO-16-0038A, DO-15-0159A (16A-DO16-0038-OST)

Dr Reiss was recused.

Respondent was present. John R. Tellier, Assistant Attorney General, was present to provide the Board legal advice. The Board reviewed and considered the Administrative Law Judge's recommendation in this case.

Mary Williams, Assistant Attorney General, Licensing and Enforcement Section, represented the State of Arizona, and recommended adoption of the Administrative Law Judge's recommendation with one correction of a date in the second paragraph.

Dr. Tauber addressed the Board.

MOTION: Mr. Landau moved to adopt the Administrative Law Judge's recommended Findings of Fact. Dr. Erbstoesser seconded.

VOICE VOTE: The motion carried unanimously.

MOTION: Mr. Landau moved to strike "2015" from line 20 and insert "2016". Mr. Spiekerman seconded.

VOICE VOTE: The motion carried unanimously.

MOTION: Mr. Landau moved to adopt the Administrative Law Judge’s recommended Conclusions of Law. Dr. Erbstoesser seconded.

VOICE VOTE: The motion carried unanimously.

MOTION: Mr. Landau moved to adopt the Administrative Law Judge’s recommendation for Revocation of Permit. Dr. Erbstoesser seconded.

ROLL CALL VOTE: The motion carried 5-0.

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

13. REVIEW, DISCUSSION AND ACTION ON PROPOSED CONSENT AGREEMENT

- A. John Howard Dumbolton, DO DO-14-0301A License No. 3568

The Respondent was not present. The Executive Director presented the proposed Consent Agreement for consideration.

MOTION: Dr. Spiekerman moved to accept the proposed Consent Agreement. Dr. Erbstoesser seconded.

ROLL CALL VOTE: The motion carried 6-0.

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

14. ADJOURNMENT

The Board adjourned at 4:30 p.m.